FIVE CLASSIC JUST-WAR THEORIES:
A STUDY IN THE THOUGHT OF THOMAS AQUINAS, VITORIA, SUAREZ, GENTILI, AND GROTIUS

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A Dissertation Presented to
The Faculty of the Graduate School of Yale University
in Candidacy for the Degree of Doctor of Philosophy
1971

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SUMMARY

This dissertation is a historical and comparative study of five major just-war theorists: Thomas Aquinas, Francisco de Vitoria, Francisco Suárez, Alberico Gentili, and Hugo Grotius.

The selection of these particular theorists is based primarily on a consensus of the experts: historians of the Roman-Catholic just-war tradition and historians of international law generally rank these five among the seven or eight most representative, creative, and influential just-war spokesmen. The fact that all five theorists discussed war in highly systematic fashion facilitates comparison of their views.

Each of the theorists is viewed against the backdrop of his historical situation. The description of each theorist's socio-political context includes reference to current patterns of political authority, the major wars of the period, and contemporary military practice. The brief sketch of each author's intellectual context surveys the major participants in contemporary discussions of war, the most-debated issues, and the various shades of current opinion concerning warfare. As a complement to such macro-historical generalization, the precise relationship of each theorist to contemporary socio-political and intellectual phenomena is also investigated.

The comparative analysis of the five just-war theories is based primarily on a study of each theorist's major systematic discussion of war. In the cases of Thomas Aquinas, Vitoria, Suárez, and Gentili this major discussion occurred in a single work--an easily identifiable question, lecture, treatise, or book. Grotius, however, devoted two entire books to the subject of war, both of which provide valuable information concerning his just-war views. The basic analytical framework employed in the study is derived from the writings of the theorists themselves. All five theorists devoted primary attention to four fundamental issues: whether war is ever justifiable; who may wage war; when war may be waged; and how war should be waged.

Several general conclusions emerge from this combination of historical investigation and comparative analysis. 1. The just-war theories of all five writers can be rather precisely related to particular wars which were being waged during their lifetimes. 2. Concretely applied, the various just-war theories performed a dual function: they served to restrain violence, on the one hand, and to justify it, on the other. 3. According to the conception of the classic theorists, the just war and the crusade were analogous forms of warfare, not antitheses. 4. There is no single, clearly-identifiable just-war theory; rather, there were diverse just-war theories within an ongoing just-war tradition.

XUM

ACKNOWLEDGMENTS

It is a pleasure to be able to thank several fellow-participants in this venture. Substantial portions of this dissertation were read and commented on by the following persons: Mr. Frederick M. Watkins of the Yale Political Science Department; Mr. David Little of Yale Divinity School; Father Robert Justin Hennessey, O.P., of Albertus Magnus College; Father Thomas R. Heath, O.P., of the Dominican House of Studies in Washington, D.C.; and Mr. Charles Powers of Yale Divinity School. For their stimulating criticisms I wish to express sincere thanks. In addition, I should like to thank Mr. Raymond P. Morris and Miss Jane McFarland of the Yale Divinity School Library for their aid in procuring several of the books and essays used in this study.

To three other persons I owe a special debt of gratitude. Frederick Russell has unselfishly shared the results of several years' intensive research on the canon and civil lawyers. My indebtedness to his scholarship is evident in the first two chapters of this dissertation.

Mr. James M. Gustafson, my dissertation director, has provided tactful, conscientious assistance at every stage of planning and writing. He has been a liberal advisor in two respects--generous with his time and non-coercive in his guidance.

Finally, I wish to express sincere appreciation to my wife, Jane. More than anyone else, she has shared in the joys and sorrows of research and writing. In addition, she has typed the first draft, revisions, and final draft of this dissertation. For her constant encouragement, and especially for the many hours spent in typing, I am deeply grateful.

CONTENTS

INTRODUCTION 1

PART I: THE JUST WAR IN THE THOUGHT OF THOMAS AQUINAS

CHAPTER I: THOMAS AQUINAS: HISTORICAL BACKGROUND AND BIOGRAPHICAL DATA

- I. Socio-political Context 11
  - A. Thirteenth-century Social and Political Phenomena 11
    - 1. National Monarchies and the Papal Monarchy 11
    - 2. Prevalence of Crusades 13
    - 3. Medieval Art of Warfare 23
  - B. Thomas' Relation to the Socio-political Context 28
- II. Intellectual Background 37
  - A. Twelfth- and Thirteenth-century Literature on War 37
    - 1. Theologians 37
    - 2. Canon Lawyers 45
    - 3. Civil Lawyers 49
    - 4. Poets 51
  - B. Thomas' Relation to the Intellectual Background 52

CHAPTER II: THOMAS' THOUGHT CONCERNING WAR

- Introduction: Overall Division of Thought 59
- I. Whether 61
  - A. Exposition of Thomas' Thought 61
  - B. Relation to Background 66
  - C. Relation to Ethical Theory 68

II. Who 71
  A. Exposition of Thomas' Thought 71
    1. Authority 71
      a. Prince 73
      b. Church 81
    2. Other Participants 88
      a. Common Citizen 88
      b. Priest 91
      c. Military Orders 94
  B. Relation to Background 96
    1. Socio-political Context 96
    2. Intellectual Background 101
  C. Relation to Ethical Theory 108

III. When 110
  A. Exposition of Thomas' Thought 110
    1. Just Cause of Political War 111
    2. Suitable Cause of Religious War 119
  B. Relation to Background 127
    1. Socio-political Context 127
    2. Intellectual Background 136
  C. Relation to Ethical Theory 147

IV. How 148
  A. Exposition of Thomas' Thought 148
    1. Intention 148
    2. Means 158
  B. Relation to Background 170
    1. Socio-political Context 170
    2. Intellectual Background 184
  C. Relation to Ethical Theory 197

PART II: THE JUST WAR IN THE THOUGHT OF VITORIA, SUAREZ, GENTILI, AND GROTIUS

CHAPTER III: THE FOUR LATER THEORISTS: HISTORICAL BACKGROUND, BIOGRAPHICAL DATA, AND LITERARY RELATIONS

I. Historical Background 201
  A. Socio-Political Background 201
    1. Fourteenth and Fifteenth Centuries 201
    2. Sixteenth and Early Seventeenth Centuries 205
      a. Trends in Continental Land Wars 206
      b. Trends in Naval and Foreign Wars 210
  B. Intellectual Background 213

- II. Biographical Data 218
  - A. Vitoria 219
    - 1. Socio-political Context 219
    - 2. Intellectual Influences 221
    - 3. Major Work on War 224
  - B. Suárez 229
    - 1. Socio-political Context 230
    - 2. Intellectual Influences 233
    - 3. Major Work on War 235
  - C. Gentili 237
    - 1. Socio-political Context 238
    - 2. Intellectual Influences 239
    - 3. Major Work on War 241
  - D. Grotius 246
    - 1. Socio-political Context 247
    - 2. Intellectual Influences 250
    - 3. Major Works on War 253
    - 4. Perspectives on Particular Wars 261
- III. Literary Relations 269

CHAPTER IV: THE FOUR THEORISTS' THOUGHT CONCERNING WAR

- Introduction: Overall Division of Thought 276
- I. Whether 280
- II. Who 286
  - A. Authority 286
    - 1. Prince 286
      - a. War-making Authority 286
      - b. Loss of Authority 289
    - 2. Church 296
      - a. Peace-making Authority 296
      - b. War-making Authority 300
  - B. Other Participants 303
    - 1. Subjects 303
    - 2. Mercenaries 304
    - 3. Priests 307
    - 4. Military Orders 309
- III. When 310
  - A. Two Levels of Cause 310
  - B. Discussion of Cause in General Terms 312
    - 1. General Types of Cause 312
    - 2. Central Issues Concerning Cause 316
      - a. Cause Itself 316
        - (1) Last Resort 316
        - (2) Proportionality 318

XUM

        (3) Reasonable Hope of Success 320
        (4) Objective Offense vs. Subjective Guilt 321
        (5) Collective Guilt 323
        (6) Probable or Certain Cause 326
        (7) Just Cause on One Side or Two Sides 327
        (8) Neutrality 329
      b. Decision-makers 330
        (1) Prince or King 330
        (2) Common Citizens or Soldiers 333
  C. Enumeration of Specific Causes 339
    1. Non-religious Causes 339
    2. Religious Causes 345

IV. How 351
  A. Intention 352
  B. Means 355
    1. General Issues Concerning Means 355
      a. Cause as a Presupposition of Means 356
      b. Means-End Question 364
      c. Limitations on the Use of Means 366
        (1) Proportionality-principle 366
        (2) Appeal to Religious Sanctions 371
        (3) Appeal to Utility 372
        (4) Deterrence-theory 372
      d. Universalizeability of Means-prescriptions 374
      e. Disobedience to Immoral Order 379
    2. Discussion of Specific Means 379
      a. Major Means-questions 379
        (1) Lying 379
        (2) Good Faith 380
        (3) Treatment of Enemy Persons 382
      b. Minor Means-questions 392

CONCLUSION 409

BIBLIOGRAPHY 421

XUM

INTRODUCTION

The present study attempts to fill an apparent gap in the literature concerning the just-war theory. Most previous studies have concentrated almost exclusively on the intellectual history of the just-war tradition, approaching that history in one of two ways. The genetic approach has traced the development of the just-war theory through Western intellectual history, summarizing and comparing the views of large[1] or limited[2] numbers of theorists. On the other hand, synthetic studies have attempted to distill from this venerable tradition a consensus or common-denominator just-war theory.[3] In both approaches past

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[1] Alfred Vanderpol, *La doctrine scolastique du droit de guerre* (Paris: A. Pedone, 1919); Robert Regout, *La doctrine de la guerre juste de saint Augustin à nos jours d'après les theologiens et les canonistes catholiques* (Paris: A. Pedone, 1934); Joachim von Elbe, "The Evolution of the Just War in International Law," *American Journal of International Law*, XXXIII (1939), 665-688; Arthur Nussbaum, "Just War--a Legal Concept?" *Michigan Law Review*, XLII (1943-44), 453-479.

[2] Paul Ramsey, *War and the Christian Conscience: How Shall Modern War Be Conducted Justly?* (Durham, N. C.: Duke University Press, 1961), pp. 15-59; Joan Tooke, *The Just War in Aquinas and Grotius* (London: S. P. C. K., 1965); Arthur Nussbaum, *A Concise History of the Law of Nations* (revised ed.; New York: Macmillan Company, 1953), pp. 79-114.

[3] Franziskus Stratmann, *The Church and War: A Catholic Study* (New York: P. J. Kenedy and Sons, 1928), esp. pp. 78-79; Austin Fagothey, *Right and Reason: Ethics in Theory and Practice* (4th ed.; St. Louis: Mosby, 1967), pp. 442-461; John Courtney Murray, "Remarks on the Moral Problem of War," *Theological Studies*, XX (1959), 40-61; Joseph C. McKenna, "Ethics and War: A Catholic View," *American Political Science Review*, LIV

XUM

intellectual history has been, for the most part, abstracted from contemporary socio-political developments.

In contrast, the authors of two recent monographs have sought to take into account the socio-political context of particular just-war theories. Both studies concentrate primarily on the thought of a single theorist, the one a relatively unknown fifteenth-century Polish canon lawyers,[4] the other a well-known sixteenth-century Spanish theologian.[5] In my view, these recent studies have demonstrated the potential fruitfulness of relating just-war theories to particular historical situations.

What is lacking in the available literature on just war, however, is a study which combines comparative analysis of

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(1960), 647-658; Paul Ramsey, The Just War: Force and Political Responsibility (New York: Charles Scribner's Sons, 1968), esp. chap. 10; Ralph Potter, War and Moral Discourse (Richmond, Va.: John Knox Press, 1969), pp. 43-45. The historical studies of Vanderpol and Regout also include a synthetic interest (Vanderpol, La doctrine scolastique, pp. 15-170; Regout, La doctrine, pp. 15-37).

[4] Stanislaus F. Belch, Paulus Vladimiri and His Doctrine Concerning International Law and Politics (2 vols.; The Hague: Mouton & Co., 1965).

[5] Luciano Pereña Vicente, Teoría de la guerra en Francisco Suárez (2 vols.; Madrid: Consejo Superior de Investigaciones Cientificas, 1954). In addition, three historians and a political theorist have devoted cursory attention to socio-political developments in their accounts of historic attitudes toward war: Roland H. Bainton, Christian Attitudes toward War and Peace: A Historical Survey and Critical Re-evaluation (New York: Abingdon Press, 1960); Richard Shelly Hartigan, "Noncombatant Immunity: An Analysis of Its Philosophical and Historical Origins" (unpublished Ph.D. dissertation, Georgetown University, 1964); M. H. Keen, The Laws of War in the Late Middle Ages (London: Routledge & Kegan Paul, 1965); Frederick M. Russell, "The Medieval Theories of the Just War according to the Romanists and Canonists of the Twelfth and Thirteenth Centuries" (unpublished Ph.D. dissertation, Johns Hopkins University, 1969).

XUM

several just-war theorists with detailed attention to socio-political factors. The present dissertation attempts to combine both interests. Like previous intellectual-historical studies it seeks to trace the genetic development of the just-war tradition, to analyze and compare the views of various theorists, and to discover areas of consensus. Like the two recent monographs on individual theorists, this study takes into account the socio-political circumstances in which each just-war theory was formulated and investigates the possible application of each theory to the author's historical context.

From the scores of just-war theorists in the Western tradition five have been selected for treatment in this study. The attempt to study each just-war theory in depth obviously necessitated limiting the study to a few representative theorists.[6] On the other hand, the concern for genuinely comparative analysis dictated the choice of more than two theorists. After much deliberation, Thomas Aquinas, Vitoria, Suárez, Gentili, and Grotius were selected as subjects for study.

The selection of these particular theorists was based primarily on a consensus of the experts: historians of the Roman-Catholic just-war tradition and historians of international law generally rank these five among the seven or eight most representative, creative, and influential just-war theorists.[7] It is on this basis that their just-war theories are qualified as "classic." In addition, several secondary considerations influenced the choice of these five theorists. They represent several academic disciplines, especially theology and international law, as well as a variety of religious confessions, including both Roman Catholicism and Protestantism. Balancing this diversity is a fundamental unity among the theorists in terms of both methodology and chronology. The fact that all five theorists discussed war in highly systematic fashion facilitates comparison of thei views. The time-frame of the study, about 425 years, is a manageable epoch of Western history. Within that epoch there is a rather natural chronological division between the thirteenth-century era of Thomas Aquinas and the 150-year period during which the four later theorists lived and wrote.[8]

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[6] An additional reason for confining the study to a relatively few theorists is that the studies mentioned in n. 1 above have adequately surveyed the overall intellectual development of the just-war tradition.

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[7] In his study of the scholastic just-war tradition Vanderpol translates texts compiled or written by four theorists: Gratian, Thomas Aquinas, Vitoria, and Suárez (La doctrine scolastique, pp. 288-513). Regout's survey of the Catholic just-war tradition devotes the most extended treatment to three just-war theorists: Thomas Aquinas, Vitoria, and Suárez; Regout also discusses Grotius in a brief appendix (La doctrine, pp. 79-93, 152-185, 194-230, 274-278.

The views of three modern international lawyers have also been consulted. In his history of international law Nussbaum singles out the just-war theories of Vitoria, Suárez, Gentili, and Grotius for the most extended individual treatment (Concise History, pp. 79-114). Von Elbe's survey pays major attention to Augustine, Vitoria, Gentili, and Grotius ("Evolution," pp. 667-669, 674-680). In his recent book Telford Taylor devotes a chapter to "Just and Unjust Wars," citing in particular the just-war theories of Augustine, Thomas Aquinas, Vitoria, Suárez, and Grotius (Nuremberg and Vietnam: An American Tragedy (Chicago: Quadrangle Books, 1970), pp. 60-63. All three international lawyers find that little of significance has been added to the just-war tradition since Grotius.

The works of Augustine and Gratian are ignored in the present study for several reasons. Neither Augustine's scattered remarks on war nor Gratian's compilation qualifies as a systematic just-war theory. Second, most of their emphases were appropriated and systematized by the later tradition. Finally, the recent dissertation of Frederick M. Russell includes excellent discussions of both Augustine and Gratian ("Medieval Theories," chaps. 1 and 4, passim).

The description of each theorist's socio-political and intellectual context is necessarily selective rather than exhaustive: only aspects of his situation most relevant to the problem of war receive mention. Specifically, references to each writer's socio-political context concentrate on such topics as the contours of political authority, the major wars of the period, and contemporary military practice. The intellectual-historical data indicate the major participants in contemporary discussions of war, the most-debated issues, and the various shades within the contemporary spectrum of opinion concerning warfare. As a complement to such macro-historical generalization, this study also investigates the personal relationship of each theorist to his particular historical context. It seeks to determine what events he himself experienced, what sources he read and used, and how he assessed the wars fought during his lifetime.

The comparative analysis of the five just-war theories is based primarily on a study of each theorist's major systematic discussion of war. In the cases of Thomas Aquinas, Vitoria,

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[8] The two major parts of the dissertation correspond to this chronological division. In the second part the four later theorists are studied in parallel fashion; their macro-historical context is surveyed only once.

Suárez, and Gentili, this major discussion occurred in a single text--an easily identifiable question, lecture, treatise, or book.[9] Grotius, on the other hand, devoted two entire books to the systematic discussion of just war; both are employed in this study.[10] Supplementary evidence from other passages or works of the five theorists is adduced when it clarifies the interpretation of their major systematic just-war discussions.

The basic analytical categories employed in this study have been derived inductively from the writings of the theorists themselves. All five theorists devoted primary attention to four fundamental issues:

1. Whether war is ever justifiable.
2. Who may wage war (authority and other participants).
3. When war may be waged (cause or jus ad bellum).
4. How war should be waged (intention and means or jus in bello).[11]

During the centuries of just-war discussion and debate certain standard sub-questions became attached to these issues, particularly to the questions of when and how.[12] Most just-war theorists, including the five under study, felt obliged to take a position on some or all of the standard sub-questions. In this study many of these sub-questions are employed as analytical subcategories. The use of categories derived primarily from the just-war tradition itself is a deliberate mechanism for safeguarding the analysis from modernizing distortion. The employment of a single analytical framework throughout the study should facilitate accurate comparison of the five theorists' views.

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[9] Thomas Aquinas, Summa theologiae, II-II, question 40: "On War"; Vitoria, De Indis and De jure belli; Suárez, "On War" in De triplici virtute theologica, fide, spe, et charitate; Gentili, De jure belli.

[10] Grotius, De jure praedae; De jure belli ac pacis.

[11] The thesis that these are in fact the four main issues discussed by the theorists is documented in Chapters II and IV.

[12] The framework of Vanderpol's synthetic section includes a number of these perennial sub-questions (La doctrine scolastique, pp. 15-170).

Although this study is primarily historical in character, it is not devoid of interest in the present. An agenda of questions underlay the choice of the topic and the design of the investigation:

1. How many criteria does the just-war theory include and what are they?
2. How are the several criteria logically related? More specifically, is any criterion logically dependent on one or more of the other criteria?
3. Was there change or development within the just-war tradition?
4. Did theorists ever flatly disagree in their theoretical formulations of the just-war theory? If so, in what sense can one speak of the just-war theory?
5. Did just-war theorists discuss the issue of religious wars, or crusades? If so, how were just wars and crusades logically related?
6. Did just-war theorists consider the question of revolution? If so, what was the relation of just war and revolution?
7. Did the theorists explicitly treat the problem of conscientious objection?
8. Can one determine how the various just-war theorists would have applied their theories to wars of their own day? If so, did they sometimes disagree in their assessment of particular wars?

9. How were just-war theories most frequently employed by their authors? More specifically, was their aim in formulating their theories to justify past or present policy or to subject war to a series of ethical limitations?

10. What did the word "war" signify when the theorists discussed just war? What weapons were currently employed and with what effect on civilian populations?

All of the questions on this agenda concern the proper understanding of the just-war tradition as a historical phenomenon. Several of them, however, are of potential importance for twentieth-century efforts to revive or employ the just-war theory. The conclusion of this study seeks to answer these questions in light of the historical data and to suggest the possible significance of those answers.

PART I: THE JUST WAR IN THE THOUGHT OF THOMAS AQUINAS

CHAPTER I

THOMAS AQUINAS: HISTORICAL BACKGROUND AND BIOGRAPHICAL DATA

The present chapter has a twofold aim. First, it attempts to provide a brief, general account of Thomas Aquinas' historical context. In this account primary attention is concentrated on the fifty years of Thomas' lifetime, 1224 to 1274, but there is also some reference to prior developments, particularly in the section on his intellectual background. Second, the chapter seeks to determine Thomas' general relationship to his historical context. Central to this inquiry are the questions: What contemporary social and political phenomena did Thomas himself observe or experience? and, What previous discussions of war did Thomas, in fact, read?

For the most part, this general survey draws upon previous studies by biographers of Thomas Aquinas and medieval historians. It differs from biographies of Thomas in its relatively greater attention to macro-political developments in Europe and the Near East. The survey differs from general studies of medieval history in its primary focus on one man, Thomas Aquinas, and one issue, the problem of war.

XUM

Socio-political Context

Thirteenth-century Social and Political Phenomena

National monarchies and the papal monarchy

By the year 1250 supreme political power in Europe had clearly passed from the Holy Roman Emperor to a plurality of strong national sovereigns. In particular, the kings of England, France, Castile, and Aragon were extending their influence and centralizing the administration of their realms.[1] Supporters of national monarchy invented and broadcast the slogan, "The king is emperor in his own realm."[2] Meanwhile the Holy Roman Empire was in a period of sharp decline, shattered by its wars with the papacy and left leaderless by the death of Emperor Frederick II.[3]

Paradoxically, the era symbolized by the rise of strong national sovereigns was also a period of unparalleled papal political influence. This "delicate balance"[4] of ecclesiastical

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[1] Daniel Waley, Later Medieval Europe: From Saint Louis to Luther (London: Longmans, Green and Co., 1964), pp. 1-3; Regout, La doctrine, p. 52.

[2] Gaines Post, "Two Notes on Nationalism in the Middle Ages," Traditio, IX (1953), 304-310, 320; Ernst Kantorowicz, The King's Two Bodies: A Study in Mediaeval Political Theology (Princeton: Princeton University Press, 1957), pp. 232-272; Joseph R. Strayer, "Defense of the Realm and Royal Power in France," in Studi in onore di Gino Luzzatto, I (Milan: Dott. A. Giuffrè, 1949), pp. 289-296.

[3] Waley, Later Medieval Europe, pp. 33-34; Maurice Keen, The Pelican History of Medieval Europe (Baltimore: Penguin Books, 1968 [1969]), pp. 162-177.

[4] Norman F. Cantor, Medieval History: The Life and Death of a Civilization (2d ed.; New York: Macmillan Company, 1969), p. 475.

XUM

and secular authority depended in part on the character of the English and French kings. Both Henry III of England (ruled 1216-1272) and Louis IX (ruled 1226-1270) enjoyed long reigns which virtually spanned the lifetime of Thomas Aquinas. King Henry III was devoutly deferential to the papacy, while St. Louis devoted much of his energy to fighting heretics within France and infidel Moslems in Egypt and Tunisia.[5]

But the delicate church-state balance depended also on the power of the thirteenth-century papacy. Innocent III, who died in 1215, had strongly consolidated papal authority. In the years 1250-1273 his successors brought the "papal monarchy" to its peak.[6] Popes Gregory IX and Innocent IV, both trained as canon lawyers, strongly asserted the legislative authority of the papacy.[7] Papalist canon lawyers claimed for ecclesiastical courts jurisdiction over wars between Christian princes.[8] During the 1270's Pope Gregory X intervened repeatedly to pacify the disputes of secular rulers.[9] At the same time the papacy's substantial taxation powers and its control over ecclesiastical benefices enhanced its influence over secular authorities.[10]

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[5] *Ibid.*

[6] Geoffrey Barraclough, *The Medieval Papacy* (Harcourt, Brace & World, 1968), pp. 118-119.

[7] *Ibid.*, p. 120.

[8] Russell, "Medieval Theories," pp. 303-307.

[9] Palmer A. Throop, *Criticism of the Crusade: A Study of Public Opinion and Crusade Propaganda* (Amsterdam: N. V. Swets & Zeitlinger, 1940), pp. 251-252. Gregory X urged peace in Europe for the sake of a crusade in the Holy Land.

Prevalence of crusades

One illustration of papal political power in the thirteenth century was the crusade-phenomenon. Instituted in the late eleventh century, the crusade was a special type of war undertaken at the initiative of the Pope.[11] Thirteenth-century popes directed crusades against a variety of opponents, both in the Holy Land and elsewhere.[12] In fact, during Thomas' lifetime, 1224-1274, the major wars of Europe were, almost without exception, crusades.[13]

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[10] Barraclough, Medieval Papacy, pp. 121-122.

[11] Russell, "Medieval Theories," pp. 320-326. The theory of the crusade has been treated in the following works: Carl Erdmann, Die Entstehung des Kreuzzugsgedankens, Forschungen zur Kirchen- und Geistesgeschichte, Vol. VI (Stuttgart: W. Kohlhammer, 1935); H[ippolyte] Pissard, La guerre sainte en pays chrétien: essai sur l'origine et la développement des théories canoniques, Bibliothèque d'histoire religieuse (Paris: A. Picard et fils, 1912); and Michel Villey, La croisade: essai sur la formation d'une théorie juridique, L'Église et l'État au Moyen Age, Vol. VI (Paris: J. Vrin, 1942), esp. p. 257. In the present chapter a war is termed a crusade if it was a papal war in any of the following four senses: (1) a papal bull or papal letter proclaimed the crusade; (2) the Pope urged religious orders to preach the war as a crusade; (3) the Pope invited a political ruler or a military religious order to undertake a crusade; (4) the Pope extended a crusade indulgence to participants in the war.

[12] Two surveys of the crusades which give a comprehensive account of their various uses are: Nikolaus Paulus, Geschichte des Ablasses im Mittelalter vom Ursprunge bis zur Mitte des 14. Jahrhunderts, II (Paderborn: Ferdinand Schöningh, 1923), 25-29; and Jean Richard, "Crusades," New Catholic Encyclopedia, 1967, IV, 509.

[13] Evidence for this assertion includes the following: (1) according to Strayer, "the only important wars" of Louis IX were crusades (Strayer, "Defense," p. 292); (2) again, according

Between 1224 and 1274 crusades were being fought against Moslems on two fronts: in the Near East and in Spain. The Reconquista of Spain had begun two centuries before and had already achieved crusade status in 1063.[14] As is well known, Pope Urban II had launched the First Crusade to the Holy Land in 1095, or about 130 years before Thomas' birth.

From their inception the anti-Moslem crusades had been viewed by Christians as a defensive response to infidel aggression.[15] In fact one can almost speak of a "claustrophobia of Christendom" in the face of its religious and military foe. To many of the faithful it seemed as if Christianity had once covered the whole earth but that Islam had since reduced Christendom to a mere vestige of its former greatness. Perhaps nowhere had this claustrophobic sense been better epitomized

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to Strayer, much of the thirteenth century was an era of peace in northern Europe: "There were no great wars north of the Alps between 1214 and 1285" (Joseph R. Strayer and Dana C. Munro, The Middle Ages: 395-1500 [fourth edition; New York: Appleton-Century-Crofts, Inc., 1959], p. 385); (3) for the period between 1224 and 1274 the standard treatments of warfare in medieval times discuss chiefly the Crusades in the East and the crusade of the papacy against the imperial line (Charles Oman, A History of the Art of War in the Middle Ages [2 vols., 2d ed.; London: Methuen & Co., 1924], I, 419-441, 491-515; Ferdinand Lot, L'Art militaire et les armées au Moyen Age en Europe et dans le Proche Orient, I [Paris: Payot, 1946], 169-240, 295-299. Minor exceptions to this generalization were the periodic disputes among the city-states of northern Italy, and King Louis IX's brief campaign against recalcitrant barons in southern France (Daniel Waley, The Italian City-Republics, World University Library [New York; McGraw-Hill Book Company, 1969], pp. 132-135; Margaret Wade Labarge, Saint Louis: Louis IX, Most Christian King of France [Boston: Little, Brown and Company, 1968], pp. 72-79).

[14] Marshall W. Baldwin, "Bulla Cruciata," New Catholic Encyclopedia, 1967, II, 881.

[15] Erdmann, Entstehung, p. 321.

than in one account of Urban II's call to the First Crusade:

> Therefore go forward in happiness and confidence to attack the enemies of God. . . .
>
> Can anyone with any initiative, anyone who cares for the glory of Christ, tolerate that we do not even share equally with them the inhabited earth? They have made _Asia_, which is a third of the world, their homeland. . . . There of old our religion first blossomed forth, and there all the apostles but two were martyred. Now the Christians there--if any survive--eke out a miserable living, pay taxes to their wicked masters and silently long to partake of our liberty having lost their own. They have also forcibly held _Africa_, the second portion of the world for over two hundred years and I call this the ruin of Christian honour, for this continent formerly nourished men of the greatest genius, whose inspired writings will ensure them immortality so long as there is anyone to cherish Latin literature. . . .
>
> There remains _Europe_, the third continent. How small is the part of it inhabited by us Christians! . . . And even this fragment is attacked by the Turks and Saracens. Two hundred years ago they conquered Spain and the Balearic Islands: now they covet the rest.[16]

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[16] William of Malmesbury, _Gesta regum_, ed. by W. Stubbs; cited by Denys Hay, _Europe: The Emergence of an Idea_ (Edinburgh: University Press, 1957), pp. 31-32. Italics added. In his comprehensive study of Moslem-Christian relations, Norman Daniel asserts that this view embodied the _standard_ medieval Christian outlook on history:

> "Every Christian reference to lands that had once been Christian, and particularly to the Holy Land, must be understood to have been made on the assumption that these were lost provinces belonging by right to the Latin Church. St. Bernard called upon the faithful to 'defend' their Lord in His own land (_in terra sua_); he envisaged only the conversion or the extermination of the Muslims living there. Vitry's Historia [_Hierosolomitana Abbreviata_] is calculated to show how Islam seduced the East from Christendom; in the same way Roderick [in _Historia Arabum_] saw Muhammed as the seducer of Spain. This was more than a general way of thinking. It had juridical and liturgical expression; a region conquered from Islamic rule was _restored_ to the Church in the language of the curia; and the Church of Jerusalem in the twelfth century celebrated the Feast of the _Recovery_ of the city" (_Islam and the West: The Making of an Image_ [Edinburgh: University Press, 1958], pp. 109-110.

During Thomas' lifetime at least six campaigns were undertaken to re-capture the Holy Land. Of these, two had explicit papal support.[17] At the time of Thomas' death Pope Gregory X was preparing for a new Crusade to the East.[18] Despite these efforts the Latin Church continued to lose territory in the East. During Thomas' lifetime, the western Church lost Jerusalem (1244), the Latin Kingdom of Constantinople (1261), Caesarea (1265), Jaffa (1268), and Antioch (1268). In 1291, only seventeen years after Thomas' death, the Moslems decisively expelled Christian armies from Acre, the last Crusader bastion in Asia Minor.[19]

In contrast, the Christians' military campaign against the Moslems in Spain was eminently successful. Before Thomas' birth, Spanish crusaders had recovered more than half of the territory formerly dominated by the Moslems. During Thomas' lifetime Popes Gregory IX, Innocent IV, Alexander IV, and

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[17] The campaigns were the following: Frederick II's Crusade, often called the Sixth Crusade (1228-1229); the Crusade of Theobald of Champagne and Richard of Cornwall (1239-1241); St. Louis' Egyptian Crusade, often called the Seventh Crusade (1249-1250); the Crusade of the Infants of Aragon (1269); St. Louis' Tunisian Crusade, often called the Eighth Crusade (1270); and the Crusade of Edward I to Tunisia (1270-1272) (Robert Lee Wolff and Harry W. Hazard, eds., The Later Crusades: 1189-1311, Vol. II of A History of the Crusades, ed. by Kenneth M. Setton [5 vols.; Philadelphia: University of Pennsylvania Press, 1955-], pp. 429-518, passim; and Steven Runciman, A History of the Crusades, Vol. III: The Kingdom of Acre and the Later Crusades [Cambridge, England: University Press, 1954], pp. 151-348, passim).

[18] Throop, Criticism, esp. pp. 1-25.

[19] Runciman, History, III, 387-423.

and Clement IV renewed the crusade against the Moors.[20] By 1274 the Reconquista was virtually complete: Spanish Moslems were confined to the tiny Kingdom of Granada along the southern coast.[21]

Military religious orders had been formed to support the Christian cause against the Moslems both in the Near East and in Spain. Prototypical for the later orders was the Order of the Temple (Knights Templar), founded in 1119 and vigorously supported by Bernard of Clairvaux. In the Near East the Knights Templar were soon joined by two other military orders: the Hospitallers (founded *ca.* 1120) and the Teutonic Knights (*ca.* 1190).[22] In the West the Spanish crusade against the Moslems received vital support from three military religious orders: the Order of Calatrava (1164), the Order of St. James of Compostela (1175), and the Order of Alcantara (1183).[23]

The Christians' crusade against the pagan Prussians roughly spanned the lifetime of Thomas Aquinas. Proclaimed in 1217 by Pope Honorius III, the Prussian crusade followed the precedent set by earlier crusades against other northern European pagans: the Wends, the Letts, and the Estonians.[24] From about 1230 forward it was led by the Teutonic Knights, who had recently returned from the Holy Land; the Knights were supported by Popes Gregory IX, Alexander IV, and Urban IV, all of whom renewed the crusade. By 1283, nine years after the death of Thomas Aquinas, the Teutonic Knights had completely subjugated the Prussians.[25]

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[20] Paulus, *Geschichte*, II, p. 26.

[21] Roger Bigelow Merriman, *The Rise of the Spanish Empire in the Old World and in the New*, Vol. I: *The Middle Ages* (New York: Macmillan Company, 1918), pp. 108-109, 291-298.

[22] Joseph Francis O'Callaghan, "Military Orders," *New Catholic Encyclopedia*, 1967, IX, 846.

[23] Adolf Waas, *Geschichte der Kreuzzüge* (2 vols.; Freiburg im Breisgau: Verlag Herder, 1956), II, 55; F. C. Woodhouse, *The Military Religious Orders of the Middle Ages* (London: Society for Promoting Christian Knowledge, 1879), pp. 296-305, *passim*.

The precise justification for the Prussian crusade is not easy to reconstruct. In particular, it is difficult to know whether the crusaders intended to force the Prussians to become Christian converts. The crusade-leaders depicted their struggle as a defensive war by pointing to Prussian atrocities against Christian priests and to the pagans' use of force against recent Prussian converts to Christianity.[26] Pope Honorius III urged Christian warriors to protect the daughters of the Prussians from infanticide and to save prisoners from being offered to idols.[27] However, it is quite clear that the conversion of pagans, a missionary purpose, was at least one of the goals of the Prussian crusade.

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[24] Emil Michael, Geschichte des deutschen Volkes (6 vols., 3rd ed.; Freiburg im Breisgau: Herder'sche Verlagshandlung, 1897-1915), I, 109; Kenneth Scott Latourette, A History of Christianity (New York: Harper & Brothers, 1953), pp. 397-399.

[25] Michael, Geschichte, I, 109-122; cf. Paulus, Geschichte, II, 25-26.

[26] Michael, Geschichte, I, 109-110, 114, 118, 120, 121-122.

[27] Preussisches Urkundenbuch I, 1, Nr. 29; cited ibid., p. 110, n. 3.

> In at least one of the treaties establishing peace between the Knights and the conquered, it was stipulated that all who were not baptized must receive the rite within a month, that those who declined to comply should be banished from the company of Christians, [and] that any who relapsed should be reduced to slavery.[28]

During Thomas' lifetime the papacy supported a crusade against still another group of pagans, the Mongols. In the years 1240-1241 the Mongols ravaged a large part of Eastern Europe, defeating the king of Hungary and appearing on the frontiers of Germany. In response, Pope Gregory IX in 1241 proclaimed an anti-Mongolian crusade throughout Hungary, its neighboring provinces, and the German lands.[29] The Mongol threat to Europe diminished sharply after 1241; nevertheless during the next thirty years the crusade was renewed by Popes Innocent IV, Alexander IV, and Clement IV, all of whom occupied the papal throne during Thomas' lifetime.[30]

The papacy also supported a thirteenth-century crusade against schismatic Greek Orthodox Christians. In 1204 participants in the Fourth Crusade--diverted from their original destination in the Holy Land--had sacked Constantinople, ousted the

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[28] Kenneth Scott Latourette, A History of the Expansion of Christianity, Vol. II: The Thousand Years of Uncertainty: A.D. 500-A.D. 1500 (New York: Harper & Brothers, 1938), pp. 207-208. The treaty referred to was dated February 7, 1249, and is to be found in the Preussisches Urkundenbuch, I, 1, Nr. 218; cf. Throop, Criticism, pp. 108-110, 120-139.

[29] James A. Brundage, The Crusades: A Documentary Survey (Milwaukee: Marquette University Press, 1962), pp. 254-266, passim; Paulus, Geschichte, II, 26.

[30] Paulus, Geschichte, II, 26-27.

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Byzantine Emperor, and established the Latin Kingdom of Constantinople. Despite his initial lack of enthusiasm for this Western occupation, Pope Innocent III nevertheless accepted it as a means for promoting Roman Catholic orthodoxy in Byzantium. Later popes continued Innocent's policy; during the lifetime of Thomas Aquinas three popes--Gregory IX, Innocent IV, and Urban IV--promoted crusades in support of the Latin Kingdom.[31] In 1261, however, the Byzantine prince Manuel Palaeologus succeeded in expelling the military and religious representatives of the Western Church. Subsequent negotiations between Palaeologus and Pope Urban IV failed to allay Eastern mistrust of the papacy; by 1282, or eight years after Thomas' death, the breach between Eastern and Western churches was irrevocable.[32]

In addition to supporting military expeditions in the Near East and on the frontiers of Europe, the papacy launched crusades against domestic European opponents. The best-known domestic campaign against heresy, the Albigensian Crusade, had begun sixteen years before Thomas' birth and reached its climax during the first few years of his life. In 1209 the crusaders had taken the town of Béziers in southern France; according to the papal legates, the orthodox troops had slaughtered all 8,000 inhabitants, "sparing no order, sex, or age."[33] Between 1226 and 1229, or when Thomas was between two and five years old, the crusade was concluded and the Albigensian heresy forcibly suppressed.[34]

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[31] Cantor, Medieval History, p. 329; Paulus, Geschichte, II, 27.

[32] Cantor, Medieval History, p. 520; M.-D. Chenu, Toward Understanding Saint Thomas, trans. and ed. by A.-M. Landry and D. Hughes (Chicago: Henry Regnery Company, 1964), p. 343.

After the Albigensian Crusade the papacy set up the Inquisition to forestall the need for further crusades against heresy. The scope and methods of the Inquisition were gradually expanded; by the year 1252 Pope Innocent IV had authorized it to use torture to extract confessions and to "relax" convicted heretics to the secular authorities for execution by burning.[35] Despite the repressive effects of the Inquisition some heresies continued to flourish. Between 1230 and 1254 Popes Gregory IX and Innocent IV found it necessary to proclaim crusades against the Luciferians and the Stedinger in Germany, the Albigensians in Bosnia, and the Waldensians in Italy.[36]

The other main type of domestic European crusade, aptly termed the "political crusade,"[37] was waged to protect the political authority of the papacy against the power of secular rulers. Pope Gregory IX did not hesitate to launch crusades against anti-papal elements in Italy. Similarly, Popes Urban IV and Clement IV proclaimed a crusade in favor of their obedient servant, the English king Henry III, and against the nobles opposing his rule.[38]

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[33] Austin P. Evans, "The Albigensian Crusade," in Wolff and Hazard, eds., The Later Crusades, p. 289, n. 14; cf. Bainton, Christian Attitudes, p. 115.

[34] Evans, "Albigensian Crusade," pp. 316-322.

[35] Gordon Leff, Heresy in the Later Middle Ages: The Relation of Heterodoxy to Dissent, c. 1250-c. 1450 (2 vols.; New York: Barnes & Noble, 1967), I, 43.

[36] Paulus, Geschichte, II, 27-28.

[37] Joseph R. Strayer, "The Political Crusades of the Thirteenth Century," in Wolff and Hazard, eds., The Later Crusades, pp. 343-375.

But the major thirteenth-century political crusade was directed by various popes against the Holy Roman Emperor and his successors. Pope Gregory IX, fearing that Emperor Frederick II would gain control of the entire Italian peninsula and wipe out the independence of the Papal State, proclaimed a crusade against the Emperor in 1240 and 1241. He authorized crusaders who had vowed to go to the Holy Land to commute those vows and fight in Italy, offering the same indulgences to Italian crusaders as to the defenders of the Holy Land.[39]

During the next thirty years Popes Innocent IV, Alexander IV, Urban IV, and Clement IV supported crusades against Frederick and his successors Conrad IV, Manfred, and Conradin.[40] The struggle ended in 1268 when Charles of Anjou, supporter of the Pope, captured and beheaded the youthful Conradin, last-surviving heir of the imperial line.[41] At the time of the execution Thomas

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[38] Paulus, Geschichte, II, 29; cf. Daniel Waley, The Papal State in the Thirteenth Century (London: Macmillan & Co., 1961), pp. 293-294.

[39] Strayer, "Political Crusades," pp. 351-354.

[40] Paulus, Geschichte, II, 29.

[41] Strayer, "Political Crusades," pp. 366-367.

Aquinas was forty-four years old and was residing at the papal court in Italy.

The aim of this survey of thirteenth-century crusades has been to demonstrate two points. First, the term "crusade" was applied to a wide variety of wars during Thomas' lifetime.[42] Second, crusades were both the most frequent and the most significant "wars" in Thomas' day. Aside from minor skirmishes, secular wars between secular rulers for wholly secular ends did not occur in Europe between 1224 and 1274. Apart from the crusades, this period was predominantly an era of peace.[43]

Medieval art of warfare

Thirteenth-century military technology was best epitomized by two phenomena: the castle or walled town and the armored knight.[44] During this period defensive fortifications possessed a clear advantage over the offense: until the introduction of cannon and gunpowder a century later medieval castles and walled towns were virtually impregnable.[45]

> The thirteenth century was the golden age of mediaeval building in the military no less than in the civil side:

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[42] For evidence that the various types of crusade were viewed in parallel fashion by at least one of Thomas' contemporaries, see the listing of crusades by Thomas Cantipratensis, Liber miraculorum, II, 3; cited by Villey, La croisade, pp. 253-254.

[43] See n. 13 above for additional evidence on this second point.

[44] Hartigan, "Noncombatant Immunity," pp. 174-175.

[45] Oman, Art of War, I, 358.

> castles and city walls had grown too strong for the weak engines of attack that were turned against them, and hunger or treachery were the usual causes of the loss of a fortress rather than battering, mining, or escalade.[46]

The mounted knight maintained his position of military ascendancy during the thirteenth century. Protected by newly-developed, elaborate plate-armor, he was virtually impregnable if somewhat awkward. But more important than his new armor was the knight's new role in warfare. In the earlier feudal period, vassal-knights had been obligated to give forty days' free service per year to their lords. During Thomas' lifetime, however, the noble cavalry became increasingly professionalized. The more powerful kings and princes began to offer wages to their best trained knights to induce them to take part in long or distant campaigns. In addition, wealthier sovereigns began to hire mercenary cavalry and infantry to supplement their own forces.[47]

The thirteenth-century trend toward military professionalization can be traced in several of the campaigns surveyed above. Orthodox forces in the Albigensian Crusade relied increasingly on permanent commanders and mercenary troops.[48] In their crusade against the imperial line the popes of central Italy recruited mercenary troops from France, northern Italy, and their own Papal State.[49] Charles of Anjou waged his crusade against the Hohenstaufens with a combination of his own professional troops and a mercenary army recruited from France and the Low Countries.[50]

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[46] Ibid., p. 491. For example, Béziers was only captured after an ill-advised sortie (Evans, "Albigensian Crusade," pp. 288-289).

[47] Strayer and Munro, Middle Ages, p. 385; Oman, Art of War, I, 371-379.

[48] Evans, "Albigensian Crusade," p. 294.

Although professional and mercenary soldiers predominated in most of thirteenth-century Europe, there were two areas in which the average citizen might be called upon to fight: Flanders and Italy. In times of crisis the cities of both regions called upon their civic militias for service. Within these municipal armies, nobles and prosperous citizens who could afford horses constituted the cavalry-arm; the infantry obligation fell on the remainder of the adult male population. Leadership of the civic militias was always in the hands of the noble cavalry.[51]

The number of soldiers involved in thirteenth-century battles was relatively small. The following figures, taken from the period of Thomas' lifetime, suggest the limited scope of even the major battles. During the Albigensian Crusade the crusading army lost 3,000 men, by disease and in battle, during the siege of Avignon.[52] In the crusade of Charles of Anjou against the

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[49] Waley, Papal State, pp. 288-289.

[50] Oman, Art of War, I, 497; Strayer, "Political Crusades," p. 364. In the three wars mentioned in this paragraph, the professional or mercenary armies were supplemented by crusaders in the technical sense.

[51] Oman, Art of War, I, 371, 376-379; Waley, Italian City-Republics, pp. 83-86.

[52] Evans, "Albigensian Crusade," p. 318.

Hohenstaufens about 6,600 men were involved in the Battle of Benevento (1266) and perhaps 11,000 men in the Battle of Tagliacozzo (1268).[53] Louis IX was accompanied by a force of perhaps 15,000 men in his Egyptian Crusade (1248), and by about 10,000 men in the later Tunisian Crusade (1270).[54]

Thirteenth-century weaponry and equipment closely resembled those of the classical Greeks and Romans. As already noted, knights wore increasingly elaborate plate-armor; members of the infantry, on the other hand, were often clothed in steel caps and mail-shirts.[55] In field engagements the main offensive weapons of the mounted knight were the lance and sword. His counterpart in the infantry relied either on the pike or, increasingly in the thirteenth century, on the crossbow. The most important weapons for siege-warfare included the tower, scaling ladders, the battering ram, incendiary devices, the catapult, and the recently invented trebuchet.[56]

Of these weapons, the most significant was the newly-developed crossbow. Since its metal bolt could penetrate armor, it constituted a threat to the ascendancy of the armored cavalry. Fearing the physical and social effects of the crossbow, the Second Lateran Council in 1139 had banned its use "against

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[53] Oman, Art of War, I, 499-501, 509.

[54] Joseph R. Strayer, "The Crusades of Louis IX," in Wolff and Hazard, eds., The Later Crusades, pp. 494, 515.

[55] Oman, Art of War, I, 379.

[56] Ibid., pp. 376-379; Lynn Montross, War through the Ages (New York: Harper and Brothers, 1944), pp. 160-163.

Christians and Catholics."[57] The ban was not universally effective, however; by the late thirteenth century even the papal armies were employing the crossbow.[58] Its terrifying effect was mitigated somewhat by its slow rate of fire; between bolts the crossbow had to be mechanically reloaded.[59]

Closely related to medieval warfare was the tournament, developed by the knightly class during the twelfth century as a means of military training. Early tournaments had been deadly serious affairs with massed lines of mounted knights charging one another and joining in a general mêlée.[60] Primarily because of the bloodshed involved the Church had condemned tournaments at the Synod of Clermont (1130) and the Second Lateran Council (1139).[61]

During Thomas' lifetime tournaments continued to be a very popular diversion of the nobility. As noted above, the thirteenth century was, apart from crusades, primarily an age of peace: feudal warfare was dying out, and international warfare had scarcely begun.[62] Between the crusades and minor local skirmishes the knights had considerable leisure time for staging tournaments. By the latter part of the century such tournaments were becoming increasingly ritualized and decreasingly lethal. Under the influence of chivalry an elaborate set of tournament-rules was developed, which minimized the possibility of bloodshed.[63] By 1316, forty-two years after Thomas' death, Pope John XXII would rescind the Church's prohibition of tournaments.[64]

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[57] Hartigan, "Noncombatant Immunity," pp. 212-213, 307-316.

[58] Waley, Papal State, pp. 278, 281.

[59] Cantor, Medieval History, p. 492; Montross, War, p. 169.

[60] N. Denholm-Young, "The Tournament in the Thirteenth Century," in Studies in Medieval History Presented to Frederick Maurice Powicke, ed. by R. W. Hunt, W. A. Pantin, and R. W. Southern (Oxford: Clarendon Press, 1948), p. 240.

[61] Hartigan, "Noncombatant Immunity," p. 211.

[62] Strayer and Munro, Middle Ages, p. 385.

This survey of the art of war has illustrated several inherent limitations in thirteenth-century warfare. Defense largely outweighed offense. Participation in war was confined primarily to the noble class and volunteer professional soldiers. With the exception of the crossbow and the missile-weapons employed in siegecraft, thirteenth-century weaponry required hand-to-hand combat.[65]

Thomas' Relation to
the Socio-political Context

The father of Thomas Aquinas, Landolfo of Aquino, was a member of the lower nobility in the Kingdom of Sicily. As Lord of Roccasecca, Landolfo administered an estate in borderland territory, near the northern boundary of the Kingdom of Sicily and just south of the Papal State. There he and his family resided in a fortified castle.[66]

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[63] *Ibid*., pp. 385-386; Denholm-Young, "Tournament," pp. 257-266.

[64] Denholm-Young, "Tournament," pp. 240-243. According to Denholm-Young,

> "John XXII in reallowing the tournaments in 1316 . . . explains that it was difficult to get sufficient numbers of the right kind of person (i.e., trained soldiers) for the Crusade without tournaments" (pp. 240-241, n. 2).

[65] See Hartigan, "Noncombatant Immunity," pp. 183-214, for a comprehensive list of such "inherent limitations."

The noble family of Aquino had traditionally supported Emperor Frederick II, the ruler of the Kingdom of Sicily. Frederick had elevated one of Landolfo's relatives, Thomas Aquinas-Alvito, to the position of Count of Acerra and had named him vice-regent of most of southern Italy. He had also designated Lord Landolfo, Thomas' father, justiciar of the lands around Roccasecca, Cassino, and Aquino.[67] In return, the family of Aquino had faithfully served the Emperor. Count Thomas of Acerra took part in Frederick's crusade and personally negotiated with the Sultan Al Kamil of Syria. Aimone, Thomas' brother, was a soldier in an imperial army which supported the Emperor's claims in Cyprus and the Holy Land. Another brother of Thomas, Reginald, served in the Emperor's Italian campaign against the papacy.[68]

As a native of Italy, Thomas Aquinas was in a good position to observe the political power of the papacy. Indeed, the struggle between the papacy and the imperial line repeatedly affected his life. When Thomas was about two years old, fighting between papal and imperial armies broke out near Roccasecca. Thomas' father hurriedly sent the family to Naples for safety. Twelve years later renewed papal-imperial fighting threatened the monastery of Montecassino where Thomas was an oblate. When troops loyal to the Emperor occupied the monastery as a fortress in 1239, Thomas was forced to leave Montecassino and took up study in Naples.[69]

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[66] Vernon J. Bourke, *Aquinas' Search for Wisdom* (Milwaukee: Bruce Publishing Company, 1965), pp. 2-5; Angelus Walz, "Politik um Thomas von Aquin: äussere Einflüsse auf den Lebensweg und die Heiligsprechung des hl. Thomas," *Religion, Wissenschaft und Kultur*, XII (1961), 222-223.

[67] Bourke, *Aquinas' Search*, p. 5; Walz, "Politik," p. 222.

[68] Bourke, *Aquinas' Search*, pp. 2-3; Walz, "Politik," pp. 222-223.

During the 1240's, after the death of Landolfo, Thomas' immediate family seems to have swung to the papal side. In 1244 his brother Reginald had still been a member of the Emperor's army. But in 1245 Pope Innocent IV formally deposed Frederick as Emperor. Perhaps because of the papal deposition the family of Aquino turned against Frederick, who immediately accused them of plotting his downfall. Fearing the Emperor's wrath, Thomas' family fled to the Papal State. Reginald apparently turned against the Emperor as well, for he was executed by Frederick before 1250.[70]

During the 1260's the papacy finally succeeded in its struggle against the imperial line. Thomas himself was in Italy during most of the decade, spending perhaps half of his time at the court of Popes Urban IV and Clement IV. In 1264 Pope Urban sent an aide-mémoire to Count Thomas II of Acerra, urging him to stand firmly against the imperial forces and praising Aimo, Thomas' brother, for his "devotion to the Church."[71] Other relatives of Thomas, however, continued their traditional loyalty to the Emperor; after the victory of the papal party, several of them were exiled.[72]

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[69] Bourke, Aquinas' Search, pp. 11-12; Walz, "Politik," p. 223.

[70] Bourke, Aquinas' Search, pp. 2-3, 35-36. Other relatives of Thomas were implicated in a plot against Frederick in 1246, and one was executed (Kenelm Foster, trans. and ed., The Life of St. Thomas Aquinas: Biographical Documents (London: Longmans, Green and Co., 1959), p. 160.

Thomas was keenly aware of the papacy's political power. His view of Church history seems to have been that the Church had begun as a powerless minority but had subsequently achieved a position of decisive political influence. In commenting on the early Christians' obedience to Julian the Apostate, Thomas casually remarked:

> At that time the Church was but recently instituted and had not, as yet, the power of curbing earthly princes.[73]

If Thomas was able to observe the political power of the papacy, he was also in a position to recognize the significance of strong national sovereigns. During his approximately ten years in Paris he became personally acquainted with the pious King of France, Louis IX. Thomas' early biographers recorded that he was once invited to luncheon by the king and that the French monarch often consulted him for advice on matters of state.[74] Tocco reported one such consultation in the following words:

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[71] Walz, "Politik," pp. 227-228; Bourke, Aquinas' Search, pp. 114-115.

[72] Angelus Walz, Saint Thomas Aquinas: A Biographical Study, trans. by Sebastian Bullough (Westminster, Md.: Newman Press, 1951), pp. 108-109.

[73] Thomas Aquinas, Summa Theologica, trans. by the Fathers of the English Dominican Province (3 vols.; New York: Benziger Brothers, Inc., 1947-1948), part II of part II, question 12, article 2, ad 1. Unless otherwise indicated, passages from the Summa theologiae are quoted from this translation. Hereafter references to the Summa will be given in the following form: ST, II-II, 12, 2, ad 1.

> In Paris the king had to hold a council-meeting on the next day concerning some difficult and urgent matters. The night before, he commanded the Teacher to study the disputed case carefully during the night and to consider what the proper answer on the next day might be. He obediently fulfilled the commission he had received.[75]

Thomas said very little about Louis IX in his writings, but it is quite clear that he approved of the king's character. In commenting on Psalm 48:1, Thomas noted:

> Some men are rich in fact but not by desire, and these men can be saints, for example, Abraham and Louis, King of France.[76]

The other king with whom Thomas had direct dealings was Charles of Anjou, the brother of King Louis IX. At the behest of Pope Urban IV, Charles had led an anti-imperial army into

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[74] William of Tocco, Vita S. Thomae Aquinatis, chaps. 35, 43, and Bernard Gui, Vita S. Thomae Aquinatis, chap. 25; cited by Walz, Saint Thomas Aquinas, pp. 128-129, 78-79.

[75] Tocco, Vita, chap. 35; German translation in Wilhelm von Tocco, et al., Das Leben des heiligen Thomas von Aquino, trans. and ed. by Willehad Paul Eckert, Heilige der ungeteilte Christenheit: Dargestellt von den Zeugen ihres Lebens (Düsseldorf: Patmos-Verlag, 1965), pp. 131-132 (author's translation).

[76] Thomas Aquinas, In Psalmos Davidis expositio, in Opera Omnia (25 volumes; Parma: Petrus Fiaccadorus, 1852-1873), XIV, 335 (author's translation). This collection of Thomas' works will hereafter be referred to as the "Parma edition."

Thomas' native Kingdom of Sicily. By 1268 he emerged victorious and was crowned King of Sicily.[77] During his last years of teaching at the University of Naples, Thomas dealt with Charles on several occasions concerning family matters. As a teacher he also received a monthly stipend, an ounce of gold, from the royal treasury. King Charles called Thomas his friend, "a religious man dear to us."[78] It is not known whether Thomas reciprocated this high esteem.

Thomas' relation to the crusades has already been touched upon but requires further elaboration. During most of the anti-imperial crusade, both in the 1240's and in the 1260's, Thomas lived nearby on the Italian peninsula. On two occasions the crusade forced him to change residence. Relatives of Thomas fought on both sides of the conflict, and Charles of Anjou, who brought the crusade to a successful conclusion, later became personally acquainted with him. In France Thomas was a personal friend of King Louis IX, who undertook two crusading expeditions to the Holy Land. In addition, Thomas was resident at the court of Popes Urban IV and Clement IV while one or both of the latter were encouraging crusades against the Moslems in the Holy Land, the Greek Emperor, and the Prussians--as well as the anti-imperial campaign in Italy. At the same time that Urban IV was carrying on political negotiations with the Greek Orthodox prince Palaelogus, he commissioned Thomas to undertake intensive studies of the Greek theological tradition. One of Thomas' works from this period, an analysis of an anti-Greek anthology, was entitled Contra errorum Graecorum.[79] A decade later Pope Gregory X summoned the Second Council of Lyons, primarily for the purpose of planning a joint Greek-Latin crusade to the Holy Land. Eager for expert advice on the delicate negotiations with the Greeks, Gregory "requested Thomas Aquinas to bring to the council his treatise on the errors of the Greeks."[80]

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[77] Strayer, "Political Crusades," pp. 364-367.

[78] Walz, "Politik," p. 230.

There was also a close connection between Thomas' religious order and numerous crusades. His fellow-Dominicans and the Franciscans had a virtual monopoly on crusade-preaching. During the period between 1225 and 1270 Dominicans were urged at least fifteen times by various popes to preach crusades against Moslems in the East or in Spain; between 1230 and 1265 the Dominicans received papal authorization to preach the crusade against the Prussians thirty-four times.[81] Thomas was personally acquainted with at least two crusade preachers: Raymond of Pennaforte and his teacher, Albertus Magnus. In 1263 Albertus was commissioned to preach a crusade in support of the Holy Land "in Germany, Bohemia, and other places to which the German language extends."[82]

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[79] Chenu, Toward Understanding, p. 343.

[80] Throop, Criticism, p. 17, n. 78; cf. Walz, Saint Thomas Aquinas, p. 160. Thomas died on the way to Lyons.

[81] Berthold Altaner, Die Dominikanermission des 13. Jahrhunderts, Breslauer Studien zur historischen Theologie, Vol. III (Habelschwerdt, Silesia: Frankes Buchhandlung, 1924), pp. 115-117; 160-161, nn. 3 and 5.

[82] Augustus Potthast, ed., Regesta Pontificum Romanorum (2 vols.; Berlin: Rudolphus de Decker, 1874-75), n. 18491 (author's translation); Altaner, Dominikanermission, p. 114.

In addition to accompanying several of the crusades as chaplains,[83] the Dominicans were closely associated with the military orders, and in particular with the Teutonic Knights in the Prussian crusade.[84] In other cases the cross followed the sword, and Dominican missionaries began their activity only after the conquest. For example, during Thomas' lifetime Dominican missionaries founded the Province of the Holy Land in the Crusaders' States, with convents in Nicosia, Cyprus; Acre; Tripoli; and possibly Jerusalem and Antioch.[85]

The foregoing evidence links Thomas with the crusades only in a circumstantial way. It must be admitted that he devoted little explicit attention to "crusades" or "the Holy Land." Thomas did discuss the status of a vow to go on crusade to the Holy Land.[86] He also casually mentioned indulgences for preaching or fighting in a crusade[87] and approved the role of military orders fighting "in defense of the Holy Land."[88]

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[83] Altaner, Dominikanermission, p. 115; Bourke, Aquinas' Search, p. 147.

[84] Thomas Gilby, The Political Thought of Thomas Aquinas (Chicago: University of Chicago Press, 1958), p. 213.

[85] Altaner, Dominikanermission, pp. 19-29.

[86] ST, II-II, 189, 3, obj. 3 and ad 3; Quodlibetum IV, 11 (Parma ed., IX, p. 513). On the latter passage see James A. Brundage, Medieval Canon Law and the Crusader (Madison: University of Wisconsin Press, 1969), pp. 110-111.

[87] Commentary on the Sentences, IV, D. 20, qu. 1, art. 3, quª 3 [=ST, Supplementum, 25, 3]. When passages from the Commentary on the Sentences are included in the posthumous Supplementum to the Summa theologiae, the parallel reference is included in brackets.

[88] ST, II-II, 188, 3, ad 3.

There is also evidence that Thomas was keenly aware of the Dominicans' missionary activity in the wake of the crusades in Spain and the Holy Land. He wrote the Summa contra Gentiles at the request of Raymond of Pennaforte, the crusade-preacher, who was concerned to convert the Moors remaining on Spanish soil.[89] In a similar, though much shorter, work to the Cantor of Antioch, Thomas sought to refute the main errors of Islam.[90]

Thomas' treatise On Kingship was addressed to King Hugo II of Cyprus--a vigorous supporter of the Dominicans, whose Province of the Holy Land had its main quarters in Nicosia. Eschmann notes that the Dominican Province of the Holy Land was seriously threatened in the early 1260's: Jerusalem had fallen to the Moslems in 1244, and Louis IX's crusade had failed in 1250. He conjectures that Thomas' On Kingship may have been a low-keyed plea for King Hugo's assistance in a new crusade to the East.[91]

Concerning the thirteenth-century art of warfare Thomas was also no doubt well informed. As noted above, his early years were spent in a walled castle. At least two of his brothers were soldiers, as were many of his close relatives. During his years in Italy wars frequently raged about him. Although Thomas' usual subject matter did not lend itself to extended discussions of the art of war, casual allusions in his works revealed his familiarity with military matters. He was aware of the distinction between military law and mercantile law.[92] The standard medieval handbook on military affairs, Vegetius' De re militari, did not escape his attention.[93] Perhaps on the basis of personal observation Thomas noted that

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[89] Chenu, Toward Understanding, p. 289.

[90] Walz, Saint Thomas Aquinas, p. 96. The work was entitled: De rationibus fidei contra Saracenos, Graecos et Armenos.

[91] I. Th. Eschmann, "Introduction," in Thomas Aquinas, On Kingship: To the King of Cyprus, trans. by Gerald B. Phelan and revised with introduction and notes by I. Th. Eschmann (Toronto: Pontifical Institute of Medieval Studies, 1949), pp. XXXI-XXXII. Subsequent references to this work of Thomas Aquinas will be given in the form "On Kingship (Phelan trans.)."

> When a man takes up arms he solemnizes the fact in one way, namely, with a certain display of horses and arms and a concourse of soldiers.[94]

He regarded soldiering as a distinct "science and art," characterizing the period of military training as a time for "gaining skill and practice in the use of arms."[95] Finally, Thomas' allusion to "a soldier, . . . defending his king's fortress"[96] reflected the importance of defensive fortification in thirteenth-century warfare.

Intellectual Background

Twelfth- and Thirteenth-century Literature on War

Theologians

Among twelfth- and thirteenth-century theologians there was, for the most part, relatively little discussion of the morality of warfare. In one of his letters Anselm of Canterbury (d. 1109) referred to his responsibility as archbishop to call together troops.[97] Peter Abelard (d. 1142) gathered a series of texts concerning war in a chapter of Sic et non. His authorities--including Jerome, Cyprian, Augustine, Isidore of Seville, and Pope Nicholas I--all argued for the permissibility of capital punishment or just war.[98]

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[92] ST, I-II, 91, 6.

[93] For example, ST, II-II, 123, 1, ad 2; On Kingship, II, 3.

[94] ST, II-II, 88, 7.

[95] ST, II-II, 123, 3, ad 2.

[96] ST, II-II, 104, 2, ad 1.

Although Bernard of Clairvaux (d. 1153) did not discuss war as an ethical problem, he was enthusiastically involved in preaching the Second Crusade to the Holy Land and in launching a crusade against the pagan Slavs of northern Europe.[99] He also wrote a stirring endorsement of the Knights Templar entitled In Praise of the New Militia.[100] Another work, On Consideration, attempted to reconcile defeat with divine providence after the failure of the Second Crusade.[101] On several occasions Bernard articulated a general theoretical justification for particular crusades. In support of campaigns in the Near East he argued that the Moslems must be

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[97] Epistolae, Bk. III, no. 35 ad Walteram, in Patrologiae cursus completa, series latina, ed. by J.-P. Migne (221 vols.; Paris: Garnier fratres, 1844-1903), 159, cols. 66-67. Series hereafter referred to as PL.

[98] Chap. 157, in PL, 178, cols. 1607-1609.

[99] Epistolae 363, 458 (392), and 457 (394), in PL, 182, cols. 564-568, 652-654, 651-652. Numbers in parentheses refer to the enumeration in The Letters of St. Bernard of Clairvaux, trans. and ed. by Bruno Scott James (Chicago: Henry Regnery Company, 1953).

[100] De laudae novae militiae, PL, 182, cols. 921-940.

[101] De consideratione, esp. II, 1; PL, 182, cols. 741-745.

> kept from infesting or oppressing the faithful. For it is better that they be killed than that the rod of sinners be upon the lot of the just.[102]

The purpose of the crusade against the Slavs was, in Bernard's words, "to destroy utterly or, at any rate, to convert the nations."[103]

Peter Lombard's widely used textbook, The Sentences, virtually ignored the question of war. In a section on penance Peter (d. 1160) merely cited a quotation regarding the compatibility of the soldier's office with the state of penance.[104]

The Policraticus of John of Salisbury (d. 1180) described in some detail the role of the soldier, who was in John's words "the armed hand of the commonwealth."[105] But the English-born theologian did not discuss war as an ethical problem.

Peter the Chanter (d. 1197) and his circle of the Paris theologians devoted rather detailed attention to the question of war.[106] In particular, they discussed criteria for determining the justice of a war and the consequent permissibility of Christian participation. Despite their careful circumstantial analyses of war as an ethical problem the Paris theologians had no apparent impact on subsequent just-war discussions.[107]

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[102] De laudae, chap. 3; PL, 182, col. 924 (author's translation).

[103] Epistola 457, PL, 182, col. 651 (author's translation).

[104] Sententiarum libri quatuor, IV, d. 16, 2; PL, 192, col. 878.

[105] The Statesman's Book of John of Salisbury, trans. by John Dickinson (New York: Alfred A. Knopf, 1927), Bk. VI, chap. 1, p. 173.

[106] The pioneering study of this topic is John W. Baldwin, Masters, Princes, and Merchants: The Social Views of Peter the Chanter and His Circle (2 vols.; Princeton, N. J.: Princeton University Press, 1970), I, chap. 10.

Moses Maimonides (d. 1204), a major representative of the Jewish religious tradition, devoted the final treatise of his Code to "Kings and Wars." In the treatise he drew a fundamental distinction between mandatory wars and optional wars. Examples of mandatory wars were: (1) a war versus the seven nations; (2) a war versus Amalek; or (3) "a war to deliver Israel from the enemy attacking him."[108] Optional wars, on the other hand, were launched by kings to gain territory or to enhance their prestige; such wars had to receive prior sanction by the court of the seventy-one.[109]

Maimonides based his detailed discussion of rules of war on Deuteronomy 20. For example, he argued that, according to Deuteronomy 20:10, neither a mandatory nor an optional war could be launched without a prior peace offer. If the peace offer was accepted, no enemy citizens might be killed; rather all were to become tributary (Deuteronomy 20:11). If the peace offer was rejected, all adult males were to be killed in an optional war (Deuteronomy 20:13-14); in a mandatory war, all enemy citizens were to be killed (Deuteronomy 20:15-16).[110] Thus, in Maimonides' view, the Deuteronomic rules of warfare had not lost their validity even in the twelfth century.

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[107] In fact, their writings on the subject were only rediscovered and analyzed by Baldwin, a twentieth-century historian.

[108] The Code of Maimonides, Book XIV: The Book of Judges, trans. by Abraham M. Hershman, Yale Judaica Series, Vol. III (New Haven: Yale University Press, 1949), treatise 5, chap. 5, 1 (p. 217). Translation revised through comparison with that of Everett E. Gendler, "War and the Jewish Tradition," in A Conflict of Loyalties: The Case for Selective Conscientious Objection, ed. by James Finn (New York: Pegasus, 1968), p. 88.

[109] Code, Book XIV, treatise 5, chap. 5, 2 (Hershman trans., p. 217).

Of all Christian theologians prior to Thomas, Alexander of Hales (d. 1245) provided the most systematic and thorough treatment of war as an ethical problem. His Summa theologica, which in many respects represented the theological viewpoint of the entire Franciscan school,[111] included a question entitled "On the Law of Attack or of Wars." The extended discussion was divided into the following problems:

1. "Whether Fighting in War Is Lawful."
2. "Circumstances of War"
    a. "Whether Sacrilegious Princes Who Declare War Are to Be Obeyed."
    b. "Whether Ecclesiastical Persons Can Use Weapons."
    c. "Whether War Can Be Fought at Any Time."
    d. "Whether Deception Must Be Excluded in a Just War."
3. "Whether Warlike Exercises in Tournaments Are Lawful."[112]

Most of the Franciscan theologian's citations were drawn from

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[110] Ibid., chap. 6, 1 and 4 (Hershman trans., pp. 220-221).

[111] Numerous Franciscan theologians shared in the composition of the so-called Summa Halensis, which was completed only after Alexander's death. In constructing the question on war Alexander borrowed liberally from a previous work by his fellow-Franciscan, John of Rochelle (d. 1245) (Alexander of Hales, Summa Theologica, ed. by Bernardinus Klumper [4 vols.; Quaracchi-Florence: College of St. Bonaventure, 1924-48], IV/1 [Prolegomena], pp. CCCLV and CCCV; this edition of Alexander's Summa is hereafter cited as "Quaracchi ed.").

[112] Ibid., Bk. III, Pt. 2, Inq. 3, Tract. 2, Sec. 2, Qu. 1, Tit. 3, Membr. 3 (Quaracchi ed., IV/2, 683-690). The question on war covers eight large double-columned pages in the Quaracchi ed.

Augustine, and particularly from those passages which Gratian, the canon lawyer, had included in his Decretum.

Bonaventura (d. 1274), another Franciscan and a contemporary of Thomas Aquinas, virtually ignored the question of war. His sole brief remarks concerning war occurred in a comment on Luke 3:14 and in a discussion of Peter Lombard's Sentences, Book IV, distinction 16.[113] In the opinion of the Seraphic Doctor war could be either lawful or unlawful depending on the person and cause involved. He required that the person declaring war have civil authority; that the person taking part in war be a layman and not a cleric; and that the person warred against be insolent, so that he might be checked by war. Fitting causes for war were, in Bonaventura's view, "the protection of the native country, the peace, or the faith."[114]

Albertus Magnus (d. 1280), Thomas' teacher, devoted no special treatment to the question of war. Instead, he made scattered comments on the problem when it was suggested by works on which he was commenting, e.g., Luke 3:14 or passages in Aristotle's Politics.[115] In one brief passage of his Commentary on the Sentences, however, Albertus spelled out his view of war in almost-systematic fashion.

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[113] Bonaventura, Opera Omnia, ed. by Bernardinus a Portu Romatino (11 vols.; Quaracchi-Florence: College of St. Bonaventure, 1882-1902), VII, 77-78; IV, 402. Hereafter cited as "Quaracchi ed."

[114] Commentary on the Gospel of Luke, III, 32-34 (Quaracchi ed., VII, 77).

[115] Albertus Magnus, Commentary on the Gospel of Luke, III, 14, in Opera Omnia, ed. by Petrus Jammy (21 vols.; Lyons: C. Proust, 1651), X, 140-141. Hereafter cited as "Jammy ed." Commentary on the Politics, IV, chap. 4, a; and VII, chap. 2, m (Jammy ed., IV, 20 and 401).

> Warfare . . . in itself is not unlawful, but the abuse of what is lawful is manifold. Nevertheless, it consists chiefly in three things, namely, in the disturbing of the innocent, in the exaction of a larger salary than is deserved by fighting, and in exercises for the showing off of men, with harm to human beings and things--exercises like tournaments, blows of lances, and the like. Nevertheless some military exercises are necessary for the army, for example, rushes and turns and the art of striking, defending, and throwing spears, which are not prohibited. However, . . . according to the customary usage warfare is only with difficulty engaged in without sin.[116]

Another theologian contemporary with Thomas Aquinas was Roger Bacon (d. ca. 1292), the English Franciscan. Although Roger did not examine the theoretical question of war, he did voice strong criticism of the various thirteenth-century crusades. In a work completed in 1268, Bacon argued passionately for the use of the vernacular in preaching rather than the use of the sword in crusading.

> The Greeks and the Rutheni and many other schismatics . . . grow hardened in error because the truth is not preached to them in their tongue; and the Saracens likewise and the Pagans and the Tartars, and the other unbelievers throughout the whole world. Nor does war avail against them, since the Church is sometimes brought to confusion in the wars of Christians, as often happens overseas, and especially in the last expedition of the King of France as everyone knows. And if Christians do conquer other lands, there is no one to defend the lands occupied. Nor are unbelievers converted in

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[116] Commentary on the Sentences, IV, d. 16, art. 46 (Jammy ed., XVI, 359). Albert was commenting on the passage from the Sentences which questions the compatibility of the military vocation with the state of penance. See above, n. 104. Note that Albert also commented on the vow to go to the Holy Land (ibid., IV, d. 37, art. 6, ad 3).

> this way, but they are slain and sent to hell. The survivors of the wars and their sons are angered more and more against the Christian faith because of those wars, and are infinitely removed from the faith of Christ, and are inflamed to do Christians all possible evils. Hence the Saracens in many parts of the world cannot be converted; and especially is this the case beyond the sea and in Prussia and in the lands bordering on Germany, because the Templars and Hospitallers and Teutonic Knights hinder greatly the conversion of unbelievers, owing to the wars that they are always stirring up, and because of their lust of dominating. For there is no doubt but that all nations of unbelievers beyond Germany would have been converted long since but for the violence of the Teutonic Knights, because the race of pagans was frequently ready to receive the faith in peace after preaching. But the Teutonic Knights are unwilling to keep peace, because they wish to subdue those peoples and reduce them to slavery, and with subtle arguments many years ago deceived the Roman Church. . . . The faith did not enter into this world by force of arms but through the simplicity of preaching, as is clear.[117]

This survey of the theological context for Thomas' discussion of war concludes with a reference to unknown thirteenth-century pacifists. About 1270 Humbert of Romans, a Dominican and personal acquaintance of Thomas Aquinas,[118] wrote a defense of the crusades. In his apology, Humbert refuted the positions of seven kinds of opponents of holy war. The first of these

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[117] Roger Bacon, Opus majus, III, chap. 13, as translated in The Opus Majus of Roger Bacon, trans. by Robert Belle Burke (2 vols.; Philadelphia: University of Pennsylvania Press, 1928), I, 111 (translation slightly revised by comparison with that of Throop, Criticism, pp. 133, 111). Similar sentiments were expressed by William of Tripoli, a member of Thomas' order, in 1273:

> "And thus solely by the word of God, without philosophical argument and without military weapons, they [the Saracens] will seek as simple sheep the baptism of Christ and will enter into the flock of God" (De statu Saracenorum; cited and trans. by Throop, Criticism, p. 122).

[118] Walz, Saint Thomas Aquinas, p. 77.

XUM

opponents had apparently argued against the crusades on the basis of theological principles. According to Humbert, the pacifists' arguments against warfare included the following:

> Christ did not do so; rather, when he was exposed [to abuse], he did not threaten but committed himself to the one judging unjustly [sic], as Peter says. Nor did Christ teach so; rather he said to Peter, who wanted to defend him: "Put your sword in its sheath."
>
> The apostles did not do so; rather, they were joyful as they left the hearing before the council because they were worthy to suffer for the name of Jesus. Nor did the apostles even teach so. Thus Paul said to the Romans: "Not defending yourselves, dearly beloved." (How much more so, not the aggressors?) And Peter: "Not returning evil for evil or curse for curse but rather blessing."
>
> The holy martyrs did not do so; rather Maurice and his entire legion of soldiers did not resist their murderers. Similarly innumerable other martyrs hastened to martyrdom and were killed for God's sake; they were considered sheep of the slaughterer. Nor did the ancient saints teach so. Thus Jerome says: "He who lives according to the flesh persecutes the spiritual man, but never vice versa."
>
> And there are innumerable authorities of holy authors, of popes, and of councils which seem to condemn these wars, as [Gratian's Decretum] question 23 makes clear in many places.
>
> From these things it follows therefore that the Christian religion, which should follow the examples and doctrine of Christ and the saints, ought not in any way enter upon wars of this kind, through which so much blood has been spilled.[119]

Canon lawyers

In contrast to the theologians, who seldom paid much attention to the question of war, virtually all twelfth- and thirteenth-century canon lawyers participated in a vigorous, continuing discussion of war as an ethical problem. About 1140 Gratian compiled the basic canon-law collection, the Decretum.[120] Within this compilation he devoted one long section, or causa, to the question of war; the causa was subdivided into eight chapters:

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[119] Humbert of Romans, Opus tripartitum, Pt. I, chap. 11 (author's translation); Latin text in Ortuinis Gratius, ed., Appendix to Fasciculus Rerum Expetendarum & Fugiendarum (2 vols.; London: Richard Chiswell, 1690; reprint ed., Tucson, Ariz.: Audax Press, 1967), II, 191. Cf. Throop, Criticism, pp. 135-136.

1. "Is it a sin to make war?"
2. "What is a just war and how were just wars waged by the sons of Israel?"
3. "Should injuries to allies be repulsed by means of arms?"
4. "Is punishment to be inflicted?"
5. "Is it a sin for the judge or minister to kill the guilty?"
6. "Should the wicked be compelled to do what is good?"
7. "Should heretics be despoiled of their own property and that of the church and should he who takes possession of things thus taken away be said to possess the goods of others?"
8. "Is it lawful for bishops or any clerics to use arms, either on their own authority or by order of the Apostolic See or of the emperor?"[121]

As the questions indicate, Gratian did not confine his attention to war in the narrow, technical sense. His causa on war also included materials on such questions as punishment in general, capital punishment and the physical coercion of heretics.[122] Gratian's most frequently cited authority was Augustine, whom he quoted no less than sixty-four times. In fact, this causa of the Decretum was soon recognized as a gold mine of Augustinian citations on war and related problems.[123]

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[120] Decretum Magistri Gratiani, Vol. I of Corpus Iuris Canonici, ed. by Aemilius Friedberg (2 vols.; Leipzig: Bernhardus Tauchnitz, 1879-1881). Hereafter referred to as "Friedberg ed."

[121] Decretum, Part II, Causa 23, prologue (author's translation; Friedberg ed., I, col. 889). Causa 23 as a whole covers thirty-eight double-columned pages in the Friedberg ed., and includes 166 separate citations, or canons.

[122] For a thorough discussion of this causa, see Russell, "Medieval Theories," chap. 4, pp. 178-194. Other passages in the Decretum which touched upon the problem of force or war were: Part I, Distinction 1, canon 7; D. 90, c. 11; Pt. II, C. 24, qu. 3, c. 25. These canons dealt with repelling force with force, the Truce of God, and the Peace of God, respectively.

During the latter part of the twelfth century and the early years of the thirteenth century many canon lawyers commented on Gratian's Decretum. In his excellent study of the just war according to twelfth- and thirteenth-century lawyers, Frederick Russell cites twenty-two works by these Decretists in which the problem of war was discussed on the basis of materials in the Decretum. Virtually all of the Decretists' just-war analysis occurred in comments on Gratian's causa on war.[124]

Among canon lawyers there was therefore a century of continuing dialog on the question of war, based primarily on one causa of Gratian's Decretum. This dialog produced a substantial body of literature which endeavored to define and apply the just-war concept. In particular, the Decretists sought to specify the proper causes for just war, the requisite authority for just war, and the role of the Church in just war.[125]

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[123] For example, Alexander of Hales drew upon this causa for many of the quotations in his treatment of war (Summa Theologica [Quaracchi ed., IV/2, 683-690]). See n. 111 above.

[124] Known authors of these works were: Rufinus, Sicard of Cremona, Huguccio, Stephen of Tournai, Johannes Faventius, Roland Bandinelli, Paucapalea, Johannes Bassianus, Simon of Bisignano, Johannes Teutonicus, Alanus Anglicus, Laurentius Hispanus, Peter of Salins, and Bartholomew of Brescia. There were, in addition, eight anonymous summae and one anonymous gloss on the Decretum (Russell, "Medieval Theories," chaps. 4 and 5, passim).

[125] Russell, "Medieval Theories," chap. 4, passim.

From 1190 on canon lawyers began to collect and comment upon recent conciliar decrees, or decretals. In 1234 Raymond of Pennaforte completed the authoritative collection of these decretals; his new canon-law collection came to be known as the *Decretals of Gregory IX*.[126] Scattered throughout the *Decretals* were titles and chapters relating to war. The titles most directly connected with the problem of war were the following:

I, 34: "Truce and Peace [of God]"
II, 13: "The Restitution of Spoils"
II, 24: "Swearing by an Oath"
III, 34: "The Vow"
III, 50: "The Obligation of Clerics and Monks to Avoid Secular Occupations"
V, 6: "Jews, Saracens, and Their Servants"
V, 7: "Heretics"
V, 12: "Voluntary or Accidental Homicide"
V, 13: "Tournaments"
V, 15: "Archers."[127]

Thus it is clear that the Decretals of Gregory IX themselves added substantially to the canon-law literature concerning the problem of war. In addition, both before and after their official codification the various decretals were commented upon by the so-called Decretalists. According to Russell, in the years between 1190 and 1275 at least ten of them discussed war on the basis of these new materials.[128] During the same period three Decretalists treated the war-question in penitential books.[129]

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[126] "Decretales Gregorii P. IX." in *Decretalium Collectiones*, Vol. II of *Corpus Iuris Canonici* (Friedberg ed., cols. 5-928). Hereafter cited as "*Decretals of Gregory IX*."

[127] This list has been gleaned from the footnotes of Russell, "Medieval Theories," chap. 5. The translations are my own, made from the titles given in the Friedberg ed., II, cols. 203-807, *passim*.

[128] Russell, "Medieval Theories," chap. 5. The Decretalists were Bernard Botone, Goffredus of Trano, Vincentius Hispanus, Damasus, Johannes de Deo, Alanus Anglicus, Tancredus, Johannes Teutonicus, Innocent IV, and Hostiensis.

In their comments the Decretalists continued the discussion of some issues already raised by the Decretists: just cause, authority, and the role of the Church. But the Decretalists also treated new questions, seeking, for example, to define standards for the conduct of just war and to determine the legal consequences of a war's being just. They also elaborated an explicit theory of the crusade.[130] In sum, by the year 1266, when Thomas Aquinas began composing the *Summa theologiae*, canon lawyers had already accumulated a massive literature on the problem of war, the precipitate of 125 years of discussion and debate.

Civil lawyers

In contrast to the canon lawyers, the civil lawyers of the twelfth and thirteenth centuries devoted relatively little attention to the question of war. It must be admitted that the Roman civil law upon which the lawyers commented provided little occasion for such discussion. Unlike Gratian's *Decretum*, the *Corpus juris civilis* treated only a few war-related themes in widely-scattered passages. These themes included the repulsion of force by force; the seizure of booty; the ransom or enslavement of prisoners of war; and the incompatibility of a commercial vocation with military service.[131]

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[129] *Ibid*. The canon lawyers were Johannes de Deo, Raymond of Pennaforte, and William of Rennes.

[130] This listing of issues follows the outline of Russell, *ibid*.

Among the Glossators of Roman law four discussed the question of war most extensively: Placentius (d. 1191), Azo (d. 1210), Accursius (d. 1263), and Odofredus (d. 1265). Their discussions, which usually occurred in comments on the Justinian *Code* or the *Digest*, treated war as a legal rather than as a moral problem: war was defined as an officially-declared state of affairs between the Roman people and its enemies. The Glossators' predominant interest in questions of officiality rather than morality was reflected in their analysis of various specific themes. As one might expect, commentators on the Roman law regarded the Emperor as the unique and authoritative representative of the Roman people in matters pertaining to war. The Glossators also distinguished sharply between the official state of war and personal self-defense, arguing that a private individual could defend himself immediately (*in continenti*) and moderately (*moderamen*) but that any action beyond these limits should be officially sanctioned. Finally, following the civil law, they stipulated that only in an official state of war could booty be seized and prisoners enslaved.[132]

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[131] On self-defense: *Digest*, 9, 2, 45, 4; 43, 16, 1, 27; *Code*, 9, 16, 2-4. On booty: *Digest*, 41, 1, 5, 7; 41, 1, 51, 1; 49, 15, 20, 1; *Institutes of Gaius*, Second Comm., 69. On prisoners of war: *Digest*, 1, 5, 4, 1-3; 1, 5, 5, 1; 50, 16, 239, 1; *Institutes*, 1, 3, 1-3; 2, 1, 17; *Novellae*, 89, 1. On vocations: *Code*, 12, 35.

[132] For the information in these three paragraphs I am indebted to Russell, "Medieval Theories," chap. 3.

XUM

Poets

A final aspect of Thomas' intellectual background was the popular literature developed in response to the crusades. Much of this literature was in the vernacular French, Provençal, German, and Italian languages.[133] During the early decades of the thirteenth century the poets generally supported the crusade to the Holy Land; but as the century wore on and as Christians suffered repeated defeats in Africa and the Near East, their mood turned to one of despair. After a loss to the Turks in 1265, Ricaut Bonomel, a Templar from the Provence, lamented:

> My heart is so full of grief that it would take little more to make me kill myself at once or tear off this cross which I took in honor of Him who was crucified. For neither cross nor my faith protects and guides against the cursed Turks. Rather it seems, as anyone can see, that to our hurt God wishes to protect them.[134]

On the issue of the Albigensian Crusade the poets were divided. Gormondo de Montpellier and Lanfranc Cigala supported the war campaign against the heretics.[135] In contrast, the Chanson de la croisade contre les Albigeois commented bitterly on the crusade commander's death in battle:

> And the epitaph relates, to one who can read it, that he (Simon de Montfort) is a saint and a martyr, and that he is destined to rise at the last day and to inherit and enjoy the marvelous bliss of heaven, and to wear the crown and to sit in the kingdom (of heaven). And I have heard it said that it may well

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[133] Throop, Criticism, p. 24.

[134] Ir' e dolors s'es e mon cors assezo; quoted by Throop, ibid., p. 178.

[135] Throop, ibid., pp. 45-46.

> be so: if by killing men, by shedding blood, by destroying souls, by consenting to murders, by following evil counsels, by starting conflagrations, by destroying barons, by bringing the nobility to shame, by seizing lands, by advancing the wicked, by kindling evil, by extinguishing good, by killing women and destroying children, one can gain Jesus Christ in this world, one should wear a crown and shine in heaven![136]

Again in relation to the papacy's crusade against the imperial line, poetic opinion lacked unanimity. Uc de Saint Circ supported the papacy, arguing that "whoever does not believe in God should not reign."[137] But Calega Panza of Genoa decried the Christians' slaughter of fellow-Christians:

> He who wishes to live by rapine can quickly and easily attain salvation. He has only to murder a hundred Christians; and whoever should strive to kill a thousand would have a higher place in paradise.[138]

Thomas' Relation to the Intellectual Background

From a study of Thomas' works it is possible to determine which of the above discussions of war he in fact utilized. An analysis of his pattern of citations provides a generally reliable, if not infallible, index to his familiarity with the thought of his intellectual predecessors and contemporaries.[139]

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[136] Quoted by Throop, ibid., p. 40 (parentheses in Throop).

[137] Un sirventes voill far; quoted by Throop, ibid., p. 52.

[138] Ar es sazos c'om si deu alegrar; quoted by Throop, ibid., p. 63. A further aspect of Thomas' intellectual background was the series of thirteenth-century papal crusade-bulls. These will not be given detailed treatment since they were fully enumerated in the first sub-section.

[139] This analysis is based primarily on the index of Thomas' sources for the Summa theologiae and the Summa contra

Of the theologians surveyed above Thomas seems never to have cited Peter Abelard, John of Salisbury, Peter the Chanter and his circle, or Roger Bacon.[140] He cited at least one work of three authors: Anselm of Canterbury, Bernard of Clairvaux, and Maimonides. However, he did not refer either to Anselm's epistles or to Maimonides' *Code*, nor did he quote Bernard's letters or *In Praise of the New Militia*. Although Thomas read Bernard's *On Consideration*, he did not quote from the section discussing the failure of the Second Crusade.[141]

It is certain that Thomas read Peter Lombard's passing reference to war in the *Sentences*, for he commented on it.[142] It is also highly probable that he read the brief comments of Bonaventura and the more extended comments of Albertus Magnus on the same passage. According to Chenu, Thomas carried on a "permanent dialogue" with these two contemporary theologians in his *Commentary on the Sentences*.[143]

Gentiles. The index is included in volume XVI of the Leonine edition of his works (Thomas Aquinas, *Opera Omnia* [19 vols.; Rome: Leonine Commission, 1882-]). But the analysis also includes evidence from recent studies by Chenu and Eschmann.

[140] *Opera Omnia* (Leonine ed.), XVI, 177-227.

[141] *Ibid*., pp. 179-180, 206, 223.

[142] *Commentary on the Sentences*, IV, d. 16, qu. 4, art. 1, qu^{a} 3 (Parma ed., VII/2, 766-767).

[143] *Toward Understanding*, p. 273; cf. I. T. Eschmann, "St. Thomas on the Two Powers," *Mediaeval Studies*, XX (1958), 185, n. 27, and 192, n. 48; I. T. Eschmann, "Studies on the Notion of Society in St. Thomas Aquinas: I. St. Thomas and the Decretal of Innocent IV *Romana Ecclesia: Ceterum*," *Mediaeval Studies*, VIII (1946), 37, n. 161.

Two discussions of war by the theologians remain to be analyzed, one in Bonaventura's Commentary on Luke, the other in the Summa Theologica of Alexander of Hales. I have been unable to find any evidence that Thomas read Bonaventura's Commentary. In any case, Bonaventura's brief remarks contributed nothing to the discussion of war which Thomas could not have found elsewhere.

The most systematic theological discussion of war prior to Thomas had been penned by Alexander of Hales in the Summa theologica. According to Eschmann, Thomas relied on the Summa in writing his own Commentary on the Sentences.[144] In addition, Eschmann argues that he used the Franciscan work in the Secunda Secundae of his own Summa theologiae.[145] Thus it is quite possible that Thomas referred to Alexander's discussion of war in his own research on the topic.[146]

Although he was a theologian by profession, Thomas did not ignore canon-law discussions of war. He made frequent use of Gratian's Decretum in the Summa theologiae, explicitly referring to it more than 150 times and citing canons from the causa on war six times.[147] That Thomas was also thoroughly acquainted with the Decretals of Gregory IX is evidenced by the fact that he explicitly quoted the work fifty-eight times in the Summa, referring on at least five occasions to each of the five books.[148]

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[144] "Two Powers," p. 183, n. 20.

[145] Ibid., p. 201, n. 77. The questions in Thomas are II-II, 10, 9-10 and 12, 2. The corresponding sources in Alexander of Hales are Summa Theologica, Pt. II, Bk. II, Tract. 8, Sec. 1, Qu. 1, Tit. 2, Membr. 2, Cap. 1 and 2; Tit. 5, Cap. 4 (Quaracchi ed., III, pp. 732-735, 763-764). The Leonine editors also claim to have detected numerous tacit allusions to Alexander's work in Thomas' Summa theologiae (Leonine ed., XVI, 250).

[146] For an attempt at a definite answer to this question, see the next chapter.

If Thomas borrowed liberally from the basic cannon-law collections, he was singularly reticent about citing commentators on those collections. In fact, in the entire Summa theologiae he did not explicitly refer to a single Decretist or Decretalist. Quite probably Thomas' silence was self-conscious and intentional. In his view the tasks of the theologian and the canon lawyer were to be sharply distinguished. The theologian's role was to establish general ethical principles on the basis of divine and natural law. The task of the canon lawyer, on the other hand, was to discuss particular cases on the basis of positive law.[149] Thomas positively resented the intrusion of canon-law methods into the discipline of theology. In one of his minor works he was moved to exclaim:

> [It seems] unfit and ridiculous that professors of sacred doctrine (sacrae divinae) should invoke those glosses of the jurists as authorities and discuss them.[150]

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[147] Leonine ed., XVI, pp. 220-221.

[148] Ibid., pp. 221-222.

[149] Thomas Aquinas, Quodlibetum IX, 15 (Parma ed., IX, 598); cited by Eschmann, "Two Powers," p. 183, n. 20.

[150] Contra pestiferam doctrinam retrahentium homines a religionis ingressu, chap. 13 (Parma ed., XV, 119); translated by I. T. Eschmann, "Studies on the Notion of Society in St. Thomas Aquinas: II. Thomistic Social Philosophy and the Theology of Original Sin," Mediaeval Studies, IX (1947), 44.

On the other hand, Thomas was keenly aware of both past and contemporary discussions among Decretists and Decretalists. His most direct connection with the canon-law tradition was perhaps through Raymond of Pennaforte, a Spanish Dominican and a personal acquaintance.[151] In a minor work Thomas explicitly referred to Raymond's Summa de poenitentia.[152] Although he cited neither author nor work by name, it seems quite likely that Thomas drew repeatedly on Raymond's penitential Summa in the composition of both the Commentary on the Sentences and the Summa theologiae.[153] Thus he was undoubtedly familiar with Raymond's detailed circumstantial analysis of just war and of such war-related issues as tournaments, prohibited weapons, ambushes, and booty.[154]

Besides Raymond, Thomas cited only one canon lawyer by name.[155] But he often referred to the positions of other canon lawyers without explicitly naming them. For example, in his discussions of vows and simony in the Summa theologiae Thomas alluded to opinions held by "certain persons."[156] Modern scholars of Thomas' work have concluded that the unnamed persons included the canon lawyers Johannes Teutonicus, Bernard Botone, and possibly Innocent IV and Hostiensis.[157] We conclude therefore that Thomas was probably acquainted with the major currents of Decretist and Decretalist thought on the question of war.

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[151] According to ancient tradition, Thomas composed the Summa contra Gentiles at the request of Raymond of Pennaforte (Chenu, Toward Understanding, p. 289, n. 1).

[152] Contra pestiferam doctrinam, chap. 11 (Parma ed., XV, 116).

[153] Leonine ed., XVI, 271; Eschmann, "Two Powers," p. 183, n. 20; p. 201, n. 77.

[154] Raymond of Peñafort, Summa de poenitentia et matrimonio (Rome: Ioannes Tallini, 1603; reprint ed., Farnborough, England: Gregg Press, 1967), Bk. II, tit. 5. Hereafter referred to as "Tallini ed."

[155] Contra pestiferam doctrinam, chap. 11 (Parma ed., XV, 116). The lawyer was Goffredus of Trano who wrote a Glossa super rubricis decretalium. For a discussion of Thomas' relationship to Raymond, Goffredus, and other canon lawyers see Carlo Molari, Teologia et diritto canonico in San Tommasso d'Aquino (Rome: Theological Faculty of the Pontifical Lateran University, 1961), pp. 82-85.

In contrast to his rather frequent references to the canon law, Thomas cited the Roman civil law only seldom.[158] In many cases passages from the civil law were mediated through Gratian's Decretum or through the Summa de poenitentia of Raymond of Pennaforte. In other cases, Thomas seems to have transcribed directly from the Digest or the Code.[159] There seems to be no evidence that he employed twelfth- or thirteenth-century glosses on the civil law.

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[156] ST, II-II, 88, 11; 100, 2, ad 6.

[157] Leonine ed., XVI, 262; Thomas Aquinas, Summa Theologiae, ed. by the Ottawa Institute of Medieval Studies (5 vols.; Ottawa: Studii Generalis O. Pr., 1941-45), III, 1886, 1943, 1946. Hereafter cited as "Ottawa ed." The Leonine editors assert that echoes of all four of these canon lawyers are to be found in Thomas. Eschmann gives several examples of Thomas' use of Raymond of Pennafort, argues that Thomas referred to William of Rennes, but questions whether he used Innocent IV or Hostiensis ("Two Powers," pp. 183, n. 20; 201, n. 77; 204, n. 91).

[158] The Leonine index lists thirty-three references to the civil law in the Summa theologiae (Leonine ed., XVI, 222).

[159] Jean-Marie Aubert, Le droit romaine dans l'oeuvre de saint Thomas, Bibliothèque Thomiste, Vol. XXX (Paris: J. Vrin, 1955), pp. 125-131.

Finally, Thomas probably could not read most of the vernacular languages in which the poets supported or criticized the crusades. There is no evidence in his works to indicate that he did so.

XUM

CHAPTER II

THOMAS' THOUGHT CONCERNING WAR

The following analysis is divided into four sections, which correspond to the central questions treated by Thomas in his major systematic discussion of war:

1. Whether
   "Whether fighting in war is always a sin."
   "Whether any war is lawful."
2. Who
   "The authority of the prince."
   "Whether it is lawful for clerics and bishops to fight."
3. When
   "A just cause is required."
4. How
   "It is required that the intention of those fighting be right."
   "Whether it is lawful to lay ambushes."
   "Whether it is lawful to wage war on holy days."[1]

The discussion of each of these four questions is subdivided into three parts. The parts entitled "Exposition of

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[1] The sources for these excerpts from Thomas' question "On War" follow. The translations are my own.

1. ST, II-II, 40, prologue and title of article 1.
2. ST, II-II, 40, 1; 40, 2, title.
3. ST, II-II, 40, 1.
4. ST, II-II, 40, 1; 40, 3, title; 40, 4, title.

These translations, like all of the author's translations from the _Summa theologiae_ which follow, are based on the Latin text of the Leonine ed. Quotations from the _Summa_ which are not designated as "author's translation" are taken from the 3-volume translation of the English Dominicans (see Chap. I, n. 73).

Thomas' Thought" provide a systematic analysis of his position on war. They are based primarily on the question "On War" in the Summa theologiae but include supplementary data from other questions and works.[2] The "Background" sub-sections relate specific emphases within Thomas' just-war theory to contemporary socio-political and intellectual history. Where possible, direct connections are drawn between Thomas' thought and his personal experience or reading. When such close correlation is impossible, illustrative materials from contemporary life and thought are adduced. Since Thomas' discussion of just war exemplified his method of "doing ethics," a third part is included in each section. These sub-sections, entitled "Relation to Ethical Theory," indicate how the categories employed in Thomas' general discussion of morality[3] apply to the various components in his analysis of war.

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[2] The most important supplementary sources for Thomas' views on war can be grouped as follows:

1. Vices opposed to faith: unbelief, heresy, and apostasy (ST, II-II, 10-12).
2. Vices opposed to peace, which is an effect of love: schism, (war,) strife, and sedition (ST, II-II, 39-42).
3. Vices opposed to justice: homicide and theft (ST, II-II, 64 and 66).
4. The judicial precepts of the Old Law (ST, I-II, 105, 3).
5. [illegible] of the virtues annexed to justice (ST, II-II, 108).
6. Martyrdom, an act of fortitude (ST, II-II, 124, 5).
7. Military orders (ST, II-II, 188, 3 and 4).
8. War and the state of penance (Commentary on the Sentences [CS], IV, d. 16, qu. 4, art. 2, qu^{a} 3).
9. Civil and religious authority (CS, II, d. 44; On Kingship).
10. Crusade-vows and crusade-indulgences (CS, IV, d. 20, qu. 1, arts. 3 and 4; IV, d. 32, qu. 1, art. 4, ad 1; Quodlibetum II, 16; Quodlibetum IV, 11).

[3] ST, I-II, 18-21.

Whether

Exposition of Thomas' Thought

Thomas' ex professo treatment of war was included in a discussion of four vices opposed to peace: schism, war, strife, and sedition. In treating each vice he began by asking whether it was (always) a sin. His two formulations of the whether-question in the case of war were: "Is fighting in war always a sin?" and "Is any war lawful?"[4] The fact that Thomas regarded schism, strife, and sedition as acts that were always sinful might lead one to expect that he would similarly reject all participation in warfare as immoral.[5]

In addition to placing war in the list of vices against peace, Thomas acknowledged other serious objections to war. Certain biblical passages, particularly statements by Jesus and Paul, stood in apparent contradiction to war.[6] And the canon law had only recently expressed its disapproval of tournaments, which provided military training.[7] Interestingly, Thomas did not cite the pacifist-like statements of some of the early church fathers.

In answering the apparent biblical objections to war Thomas' tactic was to limit severely the application of the biblical texts. Such limitation gave Thomas "space" to develop his own thought in a way which did not contradict the scriptures. The first difficult text was Jesus' statement, "All who take the sword will perish by the sword."[8] Thomas, following Augustine,[9] limited the application of this text by giving the words "take the sword" a technical meaning. To "take the sword," said Thomas, was to use the sword without official authorization. Thus Jesus' statement, far from constituting an objection to war, was harmonized with Thomas' requirement that a proper authority initiate warfare.

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[4] ST, II-II, 40, prologue and title of article 1.

[5] ST, II-II, 39-42.

[6] ST, II-II, 40, 1, objs. 1 and 2; 40, 2, sed contra.

[7] ST, II-II, 40, 1, obj. 4; Decretals of Gregory IX, V, 13.

Two other biblical texts did not lend themselves so easily to a verbal solution. Both Jesus and Paul seemed to have enjoined non-resistance to evil. In his Sermon on the Mount Jesus had counseled his followers: "But I say to you, Do not resist evil."[10] In a similar vein Paul had written: "Do not defend yourselves, beloved, but give place to wrath."[11] Both in his ex professo treatment of war and in articles concerning homicide and military orders Thomas sought to limit the application of these texts. His first step was to refer the texts to a highly particular situation. According to Thomas, the injunctions of Jesus and Paul applied only to a case of self-defense involving no more than two private citizens. Thus Thomas effectively denied the applicability of the injunctions: (1) to a situation involving punishment rather than self-defense; (2) to a situation involving such official roles as those of prince, judge, policeman, or soldier; and (3) to a situation involving moral responsibility for third persons.[12]

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[8] Matthew 26:52; cited in ST, II-II, 40, 1, obj. 1.

[9] Contra Faustum, 22, 70; ST, II-II, 40, 1, ad 1.

[10] Matthew 5:39; ST, II-II, 40, 1, obj. 2; 188, 3, obj. 1.

[11] Romans 12:19; ST, II-II, 40, 1, obj. 2; 64, 7, obj. 5.

But Thomas limited the meaning of the injunctions still further. Even in a case of self-defense involving no more than two private citizens, the injunctions applied only to the "preparation of the mind"[13] and not to external action. In other words, the injunctions of Jesus and Paul were, as applied to external action, counsels of perfection rather than moral precepts. As such, they were not obligatory even for those who had taken the vows of poverty, chastity and obedience. Rather, their fulfillment in deed was a work of supererogation for both religious and non-religious. Thus did Thomas attempt to harmonize the injunctions of Jesus and Paul with the Roman law's permission of personal self-defense.[14]

A final difficult text was Jesus' command to his would-be defender, Peter: "Put up your sword into its scabbard."[15]

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[12] ST, II-II, 40, 1, ad 2; 188, 3, ad 1; cf. II-II, 60, 6, ad 2; 108, 1, ad 2; 108, 2.

[13] This phrase was Augustine's (De sermone Domini in Monte, 1, 19; cited in ST, II-II, 40, 1, ad 2).

[14] ST, II-II, 40, 1, ad 2; 64, 7, answer and ad 5; cf. I-II, 108, 4, answer, obj. 4, and ad 4; II-II, 186, 2. The Roman law provision that "force may be repelled by force" was found in the Digest, 43, 16, 1, 27, and was mediated through the canon lawyers (e.g., Decretals of Gregory IX, V, 12, 18; cited by Thomas in ST, II-II, 64, 7).

[15] Matthew 26:52.

Thomas applied this command to Peter as "representing bishops and clerics."[16] Thus Jesus' injunction was employed to support the two-level theory of vocation (clergy-laity) and of morality (counsels-precepts).

The apparent biblical objections to war disposed of, Thomas turned to scripture for support of an affirmative answer to the whether-question. Following Augustine, he found such support in what John the Baptist said and did not say to the soldiers asking him for advice. John did not tell the soldiers to leave the army. He did urge them to do violence to no one and to be content with their pay.[17] Thomas seems not to have reflected further on the normative status of John's advice or the validity of an argument from silence.

Having analyzed the biblical data, Thomas next confronted the moral objection to war, an objection reflected in the structure of the treatise on charity: war was opposed to peace, one of the effects of charity. Thomas defined peace in decisively moral terms. It did not denote for him the absence of violence. Rather, peace was for Thomas an integrated orientation toward what is truly good. As such, it included both personal self-integration and social harmony.[18]

Opposed to true peace was "evil peace," which aimed at an apparent but false good. According to Thomas, those who waged just wars "intended" true peace as the end of war. They thus destroyed only the evil peace of their enemies, bringing them to "the prosperity of [true] peace."[19] Thomas probably would have stopped short of saying that such just wars guarantee the attaining of true peace by one's enemies. His general position was that justice merely removed obstacles to peace; it did not directly effect the achievement of true peace.[20]

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[16] ST, II-II, 40, 2, sed contra.

[17] Luke 3:14; Augustine, Epistola 138 ad Marcellinum; ST, II-II, 40, 1, sed contra.

[18] ST, II-II, 29, 1 and 2.

The third type of objection to war which Thomas answered was the canon-law prohibition of tournaments. The relevant decree read as follows:

> We prohibit those detestable festivals which people call tournaments, in which soldiers are accustomed to come together by agreement and, to show off their manliness and boldness, rashly engage in combat. These tournaments often cause death to men and danger to souls.[21]

Thomas carefully limited the application of this decree to warlike exercises which were "inordinate and perilous, and end in slaying or plundering."[22] He pragmatically accepted the need for military training.

Thomas' approach in answering the whether-question was thus primarily destructive rather than constructive. Having set up certain biblical, moral, and legal objections, he demolished or deflected them point by point. Consequently, his general answer to the whether-question can best be formulated in negative, theoretical terms: In principle, there is no valid objection to the act of waging war. Thomas' specific, constructive, and practical answer to the whether-question will appear in the subsequent sections on the who, when, and how of permissible war.

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[19] ST, II-II, 40, 1, ad 3.

[20] ST, II-II, 29, 3, ad 3.

[21] Decretals of Gregory IX, V, 13, 1 (Friedberg ed., II, col. 804; author's translation).

[22] ST, II-II, 40, 1, ad 4.

Relation to Background

In most respects Thomas' discussion of the whether-question was thoroughly traditional. His two formulations of the whether-question were virtual copies of Gratian and Alexander of Hales. Gratian had asked the question: "Is military service a sin?"[23] Alexander had entitled a chapter of the Summa theologica: "Is fighting in war lawful?"[24] Similarly, in his choice and

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[23] Decretum, Pt. II, C. 23, prologue (Friedberg ed., I, col. 889). That Thomas was drawing upon Gratian in constructing his discussion of war is proved by the fact that in article 1 he cited nine Augustine-quotations from Causa 23 of the Decretum. He even followed Gratian in erroneously attributing one of these texts to Augustine.

[24] Summa Theologica, Bk. III, Pt. 2, Inq. 3, Tract. 2, Sec. 2, Qu. 1, Tit. 3, Membr. 3, Cap. 1 (Quaracchi ed., IV/2, 683). The four Latin formulations of the whether-question in Thomas, Gratian and Alexander were:

Utrum bellare sit peccatum (Thomas).
Utrum aliquod bellum sit licitum (Thomas).
An militare peccatum sit (Gratian).
Utrum bellare sit licitum (Alexander).

In his own discussion of war Alexander of Hales had also drawn upon Gratian. That Thomas drew upon Alexander as well as upon Gratian in constructing ST, II-II, 40 is indicated by the following evidence: (1) the close correspondence of the issues discussed by the two theologians: whether war is lawful; authority; cause; intention; clerics; holy days; ambushes; and tournaments;

employment of biblical texts Thomas was unoriginal. All of the texts cited in his discussion of the whether question were to be found in the earlier works of Gratian and Alexander of Hales. In addition, Bonaventura and Albertus Magnus had made crucial use of John the Baptist's advice to the soldiers in their brief comments on war.[25] Behind all of these twelfth- and thirteenth-century discussions, however, stood Augustine's creative attempt to reconcile military service with the ethical teaching of the New Testament. Thomas, like the other scholars of his day, was generally content to repeat Augustine's solutions rather than to elaborate new ones.[26]

When Thomas argued that the aim of war was peace, he again struck an ancient theme. Already present in Aristotle and Cicero, the theme had been re-interpreted by Augustine, who referred it to man's quest for God. Thomas in turn deflected the search-for-peace theme toward his right-intention criterion,

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(2) Thomas' generally liberal use of Alexander's Summa in both CS and ST (Leonine ed., XVI, 250); and (3) the striking resemblance in the respective articles on ambushes.

[25] Gratian, Decretum, C. 23, prologue and qu. 1; Alexander of Hales, Summa Theologica, Bk. III, Pt. 2, Inq. 3, Tract. 2, Sec. 2, Qu. 1, Tit. 3, Membr. 3, Cap. 1; Bonaventura, Commentary on the Gospel of Luke, III, 32-34; Albertus Magnus, Commentary on the Gospel of Luke, III, 14; Commentary on the Sentences, IV, d. 16, art. 46. In his early Commentary on the Sentences Thomas, probably following his teacher Albertus, had cited John the Baptist's advice (Luke 3:14) in a brief discussion of war (CS, IV, d. 16, qu. 4, art. 1, qu^{a} 3 [Parma ed., VII/2, 766-767]).

[26] ST, II-II, 40, replies to objections 1-3. The fact that the discussion of the whether-question was so stylized and unoriginal perhaps indicates that thirteenth-century pacifists, for example, the anonymous pacifists mentioned above (Chap. I, n. 119), had little impact on contemporary intellectual life.

arguing that the person waging a just war intended the attainment of true peace.[27]

Unlike these venerable solutions and themes, the tournament was a specifically modern social phenomenon. Lacking an authoritative pronouncement of Augustine on the issue, thirteenth-century canon lawyers and theologians reached a consensus of their own. While rejecting ostentatious tournaments that resulted in loss of life, they accepted non-lethal military training which aimed at a constructive end, arguing that such training did not violate the canon-law prohibition of tournaments.[28] In the early fourteenth century Pope John XXII was to go a step further: in need of trained soldiers for a Crusade, he rescinded the canon law's prohibition.[29] Thomas' discussion of tournaments thus reflected a thirteenth-century consensus and anticipated a change in the official teaching of the Church.

Relation to Ethical Theory

In his detailed exposition of a general ethical theory

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[27] Aristotle, Nicomachean Ethics, X, 7; Cicero, De officiis, I, 23; Augustine, City of God, XIX, 13; Epistola 189 ad Bonifacium; ST, II-II, 40, 1, ad 3.

[28] Alexander of Hales argued that tournaments ought to be "moderate" and directed toward fighting "for the faith and peace of the Church" (Summa Theologica, Bk. III, Pt. 2, Inq. 3, Tract. 2, Sec. 2, Qu. 1, Tit. 3, Membr. 3, Cap. 4 [Quaracchi ed., IV/2, 690]). As noted above, [n. 116, Chap. I], Thomas' teacher Albertus Magnus accepted certain military exercises as "necessary." Raymond of Pennaforte distinguished sharply between lethal and non-lethal tournaments (Summa de poenitentia, II, 2, paragraphs 1 and 2).

[29] Tit. IX, "De torneamentis" in "Extravagantes D. Ioannis Papae XXII," Corpus Iuris Canonici (Friedberg ed., II, col. 1215); cf. Denholm-Young, "Tournament," p. 243.

Thomas distinguished three primary aspects of a moral act: (1) the object or objective (_objectum_) of the act; (2) the circumstances (_circumstantiae_) of the act; and (3) the end (_finis_) of the act.[30] He argued that a defect with respect to any of the three aspects made an act immoral.[31]

According to Thomas' ethical theory the object, or matter,[32] of an act specified the kind of act that was taking place. Examples of objects included theft, adultery, blasphemy, sedition, and war. In Thomas' view certain objects, for example, theft, were intrinsically evil.[33]

The circumstances of a moral act, on the other hand, related the act to a particular historical context. Following classical tradition, Thomas listed seven possible circumstances of moral acts: who, what, where, by what means, why, in what manner, and when.[34] In his view the circumstances of an act sometimes had an important bearing on the morality of an action, although they did not necessarily do so.[35] Often Thomas referred to the object and circumstances of an act in the same breath, speaking of the goodness or malice of an action "according to due matter and circumstances."[36] The role of making determinations concerning the object and circumstances of the moral act was assigned by Thomas to the faculty of reason.[37]

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[30] ST, I-II, 18, 2-4.

[31] ST, I-II, 18, 4, ad 3; 19, 6, ad 1; cf. II-II, 53, 2, obj. 3; 79, 3, ad 4; I-II, 71, 5, ad 1.

[32] ST, I-II, 20, 3 and 4.

[33] ST, I-II, 18, 2; II-II, 66, 5; 66, 7, ad 2.

[34] ST, I-II, 7, 3. The Latin terms were: _quis_, _quid_, _ubi_, _quibus auxiliis_, _cur_, _quomodo_, _quando_. Thomas cited the list from a work of Cicero.

[35] ST, I-II, 18, 3; 18, 10 and 11.

Clearly distinguished from these first two aspects of the moral act was Thomas' conception of the end of an act--or in modern parlance, the agent's motive or purpose in acting. Thomas emphasized the distinctiveness of the end of an act by assigning it to a different mental faculty: according to his analysis the intention of a proper end in moral action was an act of will, not of reason. Thus, if the agent's responsibility in relation to the object and circumstances of an act was to see clearly, his proper role in relation to the end was to desire or move toward an appropriate goal.[38]

In his discussion of the whether-question Thomas was clearly focusing attention on war as an object. His particular concern was to determine whether war as an object, or a specific kind of moral act, was intrinsically evil. In the parallel analysis of other vices against peace Thomas argued that schism, strife, and sedition were always wrong, i.e., intrinsically evil as objects. In contrast, having raised the whether-question in relation to war, he concluded that war was not an intrinsically evil object. The practical effect of this conclusion was to categorize war as a morally neutral act, that is, an act which was potentially good or evil depending on the circumstances of the act and the goal of the agent.

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[36] ST, I-II, 20, 2.

[37] *Ibid*.

[38] ST, I-II, 20, 2; cf. I-II, 18, 6; 19, 7. This analysis of Thomas' moral theory is indebted to Gilby's discussion in Thomas Aquinas, *Summa Theologiae*, Vol. XVIII: *Principles of Morality* (la2ae. 18-21), ed. by Thomas Gilby (New York: McGraw-Hill Book Company, 1966), "Appendices," pp. 121-191.

Since Thomas' discussion of the whether-question was an application of a more general ethical theory, his answer can be formulated in terms of that theory. We conclude on the basis of the above exposition of Thomas' thought that he would have accepted the following general ethical proposition:

> It is morally right to wage war (object), provided that due circumstances are observed and a proper end is intended.

Who

Exposition of Thomas' Thought

Thomas' discussion of the persons involved in war included two distinct foci. As is well known, he devoted major attention to the authority who initiates war. However, the analysis of war "from above," from the standpoint of authority, was not his only focus of attention. He also discussed the who-question "from below," from the standpoint of representative participants in war.

Authority

Modern versions of the just-war theory generally answer the authority-question by reference to "legitimate [political] authority" or "the authority of the prince."[39] Thomas himself, in the first article of his major systematic discussion of war, spoke only of the auctoritas principis.[40] However, in Thomas' thought on war taken as a whole, it is clear that there were two distinct kinds of authority for war, corresponding to the natural and supernatural levels of life. Thomas formulated his view of parallel authority most concisely in discussing military orders: he argued that military orders fought

> by the authority of princes or of the Church, which are competent to wage war by virtue of their office.[41]

The same parallel can be discovered by comparing Thomas' ex professo discussion of authority for war with a Quodlibetal Question concerning crusade-indulgences. One of the "three things required" for a valid crusade-indulgence was, in Thomas' words,

> authority in him who grants it; for principally the Pope can give it, but others can insofar as they receive power from him, either ordinary power or power by commission or delegation.[42]

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[39] See, for example, Fagothey, Right and Reason, p. 447; McKenna, "Ethics and War," p. 651.

[40] ST, II-II, 40, 1.

[41] ST, II-II, 188, 4, ad 2 (author's translation; italics added); cf. II-II, 188, 3, ad 4 for the same parallel.

[42] Quodlibetum II, 16 (Parma ed., IX, 484; author's translation). The other two requirements, a proper cause and a state of charity, also seem to parallel ST, II-II, 40, 1, and will be discussed in the succeeding subsections. Thomas composed the second Quodlibetal Question in 1269 or 1270 (I. T. Eschmann, "A Catalogue of St. Thomas' Works: Bibliographical Notes," the Appendix to Etienne Gilson, The Christian Philosophy of St. Thomas, trans. by L. K. Shook [New York: Random House, 1956], p. 392). The Secunda Secundae was therefore almost exactly contemporaneous with it.

But one need not go beyond the bounds of Thomas' question on war to discover that the authority for war was not always, simply a political sovereign. In the second article of that question he noted that popes and other clerics often "induced," "disposed," or "counseled" secular princes to wage war.[43] The analysis which follows reflects this basic duality in Thomas' conception of authority

Prince

As is well known, Thomas appropriated substantial elements of Aristotle's political philosophy. In opposition to the patristic and Augustinian tradition he asserted that the political order was both natural to man and uniquely important. Recalling Aristotle's statement that "the good of the nation is better than the good of a single man," Thomas declared: "The good of the republic is pre-eminent among human goods."[44]

Despite his appropriation of Aristotle Thomas was unable to forget Augustine and the Genesis account of creation. In the Commentary on the Sentences he distinguished three functions of political authority:

> (1) directing subjects in the things which are to be done;
> (2) supplying a need, as, for example, the fact that people are defended by kings; and
> (3) correcting morals, when the wicked are punished and through force are led to acts of virtue.[45]

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[43] ST, II-II, 40, 2, obj. 3 and ad 3.

[44] ST, II-II, 124, 5, obj. 3 and ad 3.

[45] CS, II, d. 44, qu. 1, art. 3 (Parma ed., VI, 785; author's translation). On the relation of Thomas to Augustine's

Unable to reconcile the use of the sword with the goodness of God's original creation, Thomas drew a sharp line between the first function of government and the latter two: he assigned the directing function to the pre-Fall state of integral nature but argued that the war-making and police functions of political authority were post-Fall phenomena.

> Before sin there would have been nothing which could have done harm to man, and there would have been no one whose will would have contradicted the good. Therefore with respect to uses (2) and (3) there would not have been dominion in the state of innocence.[46]

Normally Thomas spoke of government or dominion in its post-Fall form, that is, with its full complement of coercive powers. Within the hierarchy of kinds of law he located coercive government at the level of jus gentium.

> Dominion was introduced by the law of nations, which is human law.[47]

As a device of the jus gentium, coercive political dominion was not, strictly speaking, part of the natural law. It was, rather, a construction of the human reason for the utility of man and a non-contradictory addition to the natural law.[48]

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political views see R. A. Markus, "Two Conceptions of Political Authority: Augustine, De civitate Dei, XIX, 14-15, and Some Thirteenth-Century Interpretations," Journal of Theological Studies, XVI (April, 1965), 68-100.

[46] CS, II, d. 44, qu. 1, art. 3 (Parma ed., VI, 785; author's translation).

[47] ST, II-II, 12, 2 (author's translation).

[48] ST, II-II, 10, 10; 57, 2 and 3; cf. I-II, 94, 5, obj. 3 and ad 3; II-II, 66, 2, obj. 1 and ad 1. Thomas probably was showing his respect for an element of the Roman tradition which

By assigning it to the level of jus gentium and human law, Thomas accorded coercive political authority a place of high honor. In line with his general emphasis that "grace does not destroy nature but perfects it,"[49] he argued that a ruler's unbelief did not disqualify him from exercising coercive political authority.

> Unbelief, in itself, is not inconsistent with dominion, because dominion was introduced by the jus gentium, which is human law. But the distinction of believers and unbelievers is according to divine law, which does not destroy human law.[50]

Implicit in this position was Thomas' acceptance of a plurality of political units, each ruled by a Christian or non-Christian prince. Aristotle had called each of these basic political units a polis.[51] Thomas translated Aristotle both into Latin and into thirteenth-century terms, designating the city (civitas), the province (provincia) and the kingdom (regnum),

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had been transmitted by Isidore:

> The possession of all things in common and universal freedom are from the natural law (Etymologies, V, 4; ST, I-II, 94, 5, obj. 3).

The Roman, especially Stoic, doctrine of an original golden age neatly paralleled the biblical story of creation and sharply contradicted Aristotelian political theory. The three phenomena of coercive government, slavery, and private property were roughly analogous in Thomas' thought. He regarded all three as constructions of human law; the first two were in his view devices of the jus gentium. However, Thomas implicitly distinguished slavery from political authority by refusing to identify any aspect of slavery with the pre-Fall state (ST, I, 96, 4).

[49] ST, I, 8, ad 2 (author's translation).

[50] ST, II-II, 12, 2 (author's translation); cf. II-II, 10, 10.

[51] Politics I, 1 and 2; Nicomachean Ethics, I, 2.

as the politeia of his day. Because such political units were sufficient to meet all of their citizen's temporal needs, Thomas repeatedly referred to them in Aristotelian terms as "perfect communities."[52]

The role of the supreme ruler, or prince,[53] in each perfect community was to promote the common good of his subjects. To that end, he made laws for the citizens and sought to ward off all threats to their welfare.[54] Crimes committed by the citizens of the community constituted the internal threat to the common good. Thomas argued that the prince of each perfect community could meet this threat by recourse to the post-Fall practice of punishment.[55] If biblical warrant for the prince's domestic punitive role was required, Thomas found it in the judicial precepts of the Old Testament and in Paul's comments on the magistrate's sword in Romans 13.[56] In contrast, the external threat to the common good was posed by the action of foreign enemies. Thomas argued that the prince of each perfect community could meet the external threat by recourse to the post-Fall practice of warfare.[57]

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[52] ST, I-II, 90, 2; II-II, 50, 1; 40, 1; On Kingship, I, 1 (Phelan trans., pp. 9-10); CS, IV, d. 24, qu. 3, art. 2, qu^a^ 3 (Parma ed., VII/2, 902) [=ST, Supplementum, 40, 6]. Cf. Thomas' commentaries on Aristotle's Politics, I, 1 and 2, and Ethics, I, 2.

[53] Thomas argued that supreme political power in each perfect community was most appropriately vested in a single ruler (ST, I-II, 105, 1; On Kingship, I, 2 [Phelan trans., pp. 11-13]).

[54] In Thomas' mind the common good was simultaneously associated with the proper role of the prince (ST, I, 96, 4; II-II, 40, 1), the proper function of laws (I-II, 90, 2), and the general virtue of legal justice (II-II, 58, 5-7). For the close parallel between the internal and external threats, see ST, II-II, 40, 1; 64, 7; 66, 8; 124, 5.

[55] Thomas explicitly identified punishment as one of the functions of political authority which had been introduced only after the Fall; cf. n. 45 above.

Warfare seems to have been, in Thomas' view, parallel to, but not identical with, punishment. The foreign enemies who posed the external threat to the common good were, of course, citizens of a foreign "perfect community." As such, they were not subject to the jurisdiction of the warring prince and thus not liable to punishment by him.

> No one justly punishes another unless the latter is subject to his jurisdiction.[58]

Conscious of this conceptual problem, Thomas seems to have argued that the practice of warfare was a method of defending the common good[59] analogous to the practice of punishment. If he employed Romans 13 as a direct support for punishment, he used it as an indirect support for warfare. In addition, he found direct warrant for the practice of warfare in the judicial precepts of the Old Testament and in an authoritative statement of Augustine.[60]

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[56] ST, II-II, 40, 1; I-II, 105, 2; Commentary on Romans, chap. 13, lectio 1 in Thomas Aquinas, Super epistolas S. Pauli lectura, ed. by P. Raphael Cai (2 vols.; 8th ed.; Turin: Marietti, 1953), I, 189-193. Hereafter cited as "Marietti ed."

[57] ST, II-II, 40, 1. Thomas had explicitly identified warfare as a second post-Fall function of political authority; cf. nn. 45 and 55 above.

[58] ST, II-II, 65, 2 (author's translation); cf. II-II, 67, 1; I-II, 96, 5.

[59] Robert Regout cites six texts in which Thomas characterized war as a means to protect the common good against external threats (La doctrine, pp. 84-85).

Entailed in the prince's authority to punish and make war was his power over life and death, or as Thomas called it, "perfect coercive power."[61] Thomas justified the use of lethal force in punishment or war by the following argument: the good of the whole (the common good of the perfect community) is to be preferred to the good of the part (the life of the individual citizen or enemy), when the part seriously threatens the whole.[62] If Thomas accorded to the prince the right to employ lethal force, he also reserved it to him and persons authorized by him. Indeed he marked off the intentional killing of a human being as a unique kind of human act. Only the prince or someone authorized by him could lawfully intend the death of a fellow man for the sake of the common good.[63] Underlying this restriction was

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[60] ST, II-II, 40, 1; I-II, 105, 3. If the terms "punish" or "punishment" appeared in Thomas' sources, for example, in Augustine, he allowed the terms to stand. But so far as I have been able to determine, he himself did not characterize war as punishment. Harry Gmür also argues that in Thomas war was analogous to punishment. (Thomas von Aquino und der Krieg, Beiträge zur Kulturgeschichte des Mittelalters und der Renaissance, Vol. LI [Leipzig: B. G. Teubner, 1933], pp. 45-46).

[61] ST, II-II, 65, 2 ad 2; cf. II-II, 67, 4.

[62] ST, II-II, 64, 2.

[63] ST, II-II, 64, 7. The context makes clear that Thomas was thinking of a blameworthy or culpable victim. Thus Thomas' three famous criteria of just war were implicit in the sentence which begins, "Only the prince . . .": (1) the authority of the prince; (2) a just cause, namely, the blameworthy or culpable act of the victim; and (3) a right intention, namely, the advancement of the (common) good.

Thomas' fear that a private individual might tend to punish or make war because of personal animosity or for his own personal gain. On the other hand, he attributed to the prince and his subordinate officials a disinterested and dispassionate concern for the fair treatment of the whole community.[64]

But Thomas was also a political realist, fully aware that in some cases a prince misused his role by ruling for his own private good rather than for the common good. Like the political philosophers of ancient Greece, he characterized such unjust rulers as "tyrants."[65] The question of tyranny had significant ramifications for the problem of war, for it raised the question whether, according to Thomas, a prince could forfeit his authority to wage war through tyrannical rule.

There can be no doubt about the fact that Thomas opposed tyranny. He denounced unjust rule even in writings addressed to princes,[66] warning that tyrants undermined their own authority through injustice and arguing that whoever had the power to elect or appoint a prince, whether electors or a superior authority, might also depose him on the ground of tyranny.[67] On the other hand, a comparison of Thomas' early and later writings shows a clear trend toward deference to political authority: increasingly he opposed tyrannicide and popular rebellion against the authority of the prince.[68] This later, more conservative position was supported by several arguments. On one occasion Thomas referred to the office of the prince, asserting that even "wicked princes" should be

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[64] ST, II-II, 60, 1 ad 3; 60, 6; 64, 3; 65, 1; 108, 1.

[65] On Kingship, I, 1 and 3 (Phelan trans., pp. 8, 13-18); ST, II-II, 42, 2, ad 3. Thomas regarded tyranny as an offense against justice.

[66] For example, On Kingship, which was addressed to the King of Cyprus.

[67] On Kingship, I, 10 and I, 6 (Phelan trans., pp. 44-49, 27-28).

> honored, as standing in God's place, and as representing the community over which they have authority.[69]

In a more utilitarian vein Thomas observed that removing a tyrant often caused more problems than it solved.[70] Finally, he appealed to previous Christian practice, reminding his readers that Christians in New Testament and patristic times had patiently suffered under tyrannical rulers.[71]

Thus in Thomas' view a prince did not normally forfeit his authority to make war because of tyranny. However, Thomas did acknowledge that a Christian prince might lose that authority, at least de facto, for a religious offense--namely, apostasy. Augustine had argued that a prince's apostasy did not derogate from his war-making authority and that Christian soldiers were bound to perform military service at his command.[72] Conscious of the Church's new power to "curb earthly princes,"[73] Thomas reversed Augustine's position. In language reminiscent of the Church's recent struggle with Emperor Frederick II, he declared:

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[68] Both Gmür (Thomas von Aquino, pp. 15-20) and Gilby (Political Thought, pp. 132, 174-175, 289) note this trend in Thomas' thought.

[69] ST, II-II, 63, 3.

[70] Thomas' shorthand formula for such an imbalance of good and evil results was "scandal" (ST, II-II, 42, 2, ad 3; 108, 1, ad 5; cf. On Kingship, I, 6 [Phelan trans., p. 25]).

[71] On Kingship, I, 6 (Phelan trans., p. 26); Commentary on Romans, chap. 13, lectio 1 (Marietti ed., I, 191).

> As soon as any [prince] is officially excommunicated because of apostasy from the faith, his subjects are _ipso facto_ freed from his dominion and absolved from the oath of fidelity by which they were bound to him.[74]

Church

If the authority of the prince was fragmented into a plurality of independent sovereignties, the authority of the Church was unified in the hands of the Pope. In fact, Thomas compared the Pope to a secular king.

> The Pope has the plenitude of pontifical power, like a king in his kingdom. Bishops are appointed to share in his concern, like judges set over single cities.[75]

If mankind, considered politically, was divided into a plurality of perfect communities, the "Christian people," the Church, was united under papal rule.

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[72] ST, II-II, 12, 2, obj. 1. Thomas, probably following Gratian (Pt. II, C. 11, qu. 3, c. 94), mistakenly attributed to Ambrose this quotation from Augustine's _Enarrationes in Psalmos_, Psalm 124, verse 3.

[73] ST, II-II, 12, 2, ad 1.

[74] ST, II-II, 12, 2 (author's translation).

[75] CS, IV, d. 20, qu. 1, art. 4, qu^{a} 3 (Parma ed., VII/2, 846; author's translation) [=ST, _Supplementum_, 26, 3].

> It is clear that although peoples are distinguished into diverse dioceses and states, nevertheless, as the Church is one, so must the Christian people be one. Therefore just as for the particular people in one congregation one bishop is required, so for the whole Christian people it is required that one man be head of the entire Church.[76]

The role of the papal monarch was to promote the common good of the Church. In discussing whether there should be any ecclesiastical ruler superior to bishops, Thomas argued as follows:

> Wherever there are several authorities directed to one purpose, there must be some universal authority above the particular authorities, because in all the virtues and arts there is order according to the order of ends, as is said in Ethics I, 1. But the common good is more divine than the particular good. Therefore above the ruling power which seeks the particular good there must be a universal ruling power with respect to the common good. Otherwise there could be no cohesion toward one purpose. Therefore, since the Church is one body, there must be, if this unity is to be preserved, some ruling power with respect to the whole Church--a power above the episcopal power by which each particular Church is ruled. And this is the power of the Pope.[77]

Only on rare occasions did Thomas systematically discuss the relation of ecclesiastical authority to secular political authority.[78] His few remarks on the subject can be summarized in terms of two principles: (1) subordination and (2) diversity of function. Because secular political authority was concerned with a temporal common good, Thomas argued that it should be subordinate, at least when held by Christians, to the authority of the Church, which concerned itself with the eternal divine good.

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[76] Summa contra Gentiles, IV, 76 (Leonine ed., XV, 241; author's translation). It is quite possible that the very fragmentation of secular political authority was for Thomas a symbol of its penultimate and provisional character. Eschmann argues that for Thomas the only unity of mankind consisted in a "common spiritual destiny," and not in a common natural origin or solidarity in sin ("Studies: II," pp. 49-50). We may add that the unity of mankind was not to be found in man's political life. Cf. ST, I-II, 21, 4.

[77] CS, IV, d. 34, qu. 3, art. 2, qu^{a} 3 (Parma ed., VII/2, 902; author's translation) [=ST, Supplementum, 40, 6].

[78] I have referred to the two kinds of authority rather than to "Church" and "state" because the problem was usually the

> Since society must have the same end as the individual man, it is not the ultimate end of an assembled multitude to live virtuously, but through virtuous living to attain to God.
>
> If this end could be attained by the power of human nature, then the duty of a king would have to include the direction of men to it. . . . But because a man does not attain his end, which is the possession of God, by human power but by divine--according to the words of the Apostle (Romans 6:23): "By the grace of God life everlasting"--, therefore the task of leading him to that last end does not pertain to human but to divine government.
>
> . . . .
>
> Thus, in order that spiritual things might be distinguished from earthly things, the ministry of this [divine] kingdom has been entrusted not to earthly kings but to priests, and most of all to the chief priest, the successor of St. Peter, the Vicar of Christ, the Roman Pontiff. To him all the kings of the Christian people are to be subject as to our Lord Jesus Christ Himself.[79]

While asserting the ultimate superiority of ecclesiastical

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relation of two parts of the Church, priests and kings. On this point see Walter Ullmann, A History of Political Thought in the Middle Ages (Baltimore: Penguin Books, 1965), pp. 17-18.

[79] On Kingship, I, 14 (Phelan trans., pp. 60-62). A similar passage at the conclusion of the second book of Thomas' Commentary on the Sentences seemed to lay greater stress on the autonomy of each authority in its sphere; but that passage, too, concluded by affirming the supremacy of papal authority. See CS, II, d. 44, Expositio textus, in Aquinas: Selected Political Writings, trans. by J. G. Dawson and ed. by A. P. D'Entrèves (Oxford: Basil Blackwell, 1959), p. 187. This anthology will hereafter be referred to as "Dawson trans."

over political authority, Thomas recognized that the line of demarcation between the two was not always clear. Specifically, the Church sometimes exercised rather direct authority in the temporal sphere. Arguing theoretically, Thomas took the position that judgment was not usurped

> if a spiritual prelate interferes in temporal matters in which the secular power is subject to him or which the secular power has relinquished to him.[80]

Two illustrations of the contemporary mixing of realms were "clerics who are earthly princes"[81] and the Pope, who in Thomas' words, "holds the apex of both powers, namely, spiritual and secular."[82]

However, on one point of importance for our study Thomas distinguished radically between the functions of churchly and princely authority, namely, on the use of the sword.

> It is stated in the text [*Sentences*, IV, d. 37] that "the Church of God, which is never bound by worldly laws, has no sword except the spiritual sword." . . .
>
> . . . An accusation [of a capital crime] cannot be made in an ecclesiastical court because, as stated in the text, the Church does not wield the material sword.[83]

In other words, Thomas accepted the tradition that the Church was competent only to excommunicate, never to kill. Thus it is clear that any authority of the Church in relation to war was, in his view, necessarily an indirect authority.

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[80] ST, II-II, 60, 6, ad 3 (author's translation).

[81] ST, II-II, 64, 4, obj. 3 and ad 3.

[82] CS, II, d. 44, *Expositio textus* (Parma ed., VI, 791; author's translation).

[83] CS, IV, d. 37, qu. 2, art. 1, *sed contra* and sol. (Parma ed., VII/2, 1000; author's translation) [=ST, *Supplementum*, 60, 1]. Cf. ST, II-II, 64, 4, ad 3.

This ecclesiastical authority in military matters took three forms: (1) the granting of crusade-indulgences; (2) urging secular princes to wage war; and (3) furnishing chaplains for armies in the field. In several of his works Thomas discussed the authority of the Church to grant crusade-indulgences. He noted almost casually in the *Commentary on the Sentences* that

> sometimes the same indulgence is granted to those who preach a crusade (*crucem*) as to those who participate in it.[84]

In the same context Thomas elaborated a general theory of indulgences which explained the competence of various ecclesiastical persons to grant such dispensations.

> The Pope has the plenitude of pontifical power, like a king in his kingdom. . . . Therefore authority to grant indulgences resides fully in the Pope because he can grant them as he wishes, provided that a legitimate cause exists (*causa . . . existente legitima*). But in bishops this power is limited according to the ordination of the Pope.[85]

Late in life Thomas returned to the topic of indulgences in a *Quodlibetal Question* entitled: "If a Person Vows to Go on a Crusade but Dies before Setting Out, Does He Receive a Plenary Indulgence for His Sins?"[86] Applying his general theory of indulgences to the specific problem of crusades, Thomas reiterated the necessity of papal authorization--either directly or through his subordinates or delegates.[87] In the event of a prospective crusader's untimely death his fate was determined, according to Thomas, by the precise terms of the original papal letter which had granted the crusade-indulgence.[88]

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[84] CS, IV, d. 20, qu. 1, art. 3, qu^{a} 3, ad 2 (Parma ed., VII/2, 845; author's translation) [=ST, *Supplementum*, 25, 3, ad 2]; cf. CS, IV, d. 45, qu. 2, art. 3, qu^{a} 2, obj. 1 [=ST, *Supplementum*, 71, 10, obj. 1].

[85] CS, IV, d. 20, qu. 1, art. 4, qu^{a} 3 (Parma ed., VII/2, 846; author's translation) [=ST, *Supplementum*, 26, 3]. Thomas stopped work on the *Summa theologiae* before reaching the topic of indulgences.

The authority of the Church was also involved in urging secular princes to wage war. Thomas was able to cite solid historical precedent for such a role of the Church.

> It is lawful for bishops and clerics to induce others to wage war; for it is said [Gratian, Decretum, Pt. II, C. 23, qu. 8, c. 10]: "Because of the exhortation and entreaties of [Pope] Adrian, Bishop of the City of the Romans, Charlemagne went to war against the Lombards.[89]

In response to this precedent Thomas generalized about the Church's indirect authority in military matters:

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[86] Quodlibetum II, 16 (Parma ed., IX, 484; author's translation).

[87] See the quotation at n. 42 above; cf. CS, IV, d. 20, qu. 1, art. 4, qu^{a} 2 [=ST, Supplementum, 26, 2].

[88] Quodlibetum II, 16 (Parma ed., IX, 484). The question may be raised whether Thomas supported the crusades or merely reported the practice of the Church. It seems quite clear that Thomas regarded the "custom of the Church" as normative; in fact he argued that the custom of the Church was more authoritative than the writings of "Augustine or Jerome or any doctor whatsoever" (ST, II-II, 10, 12; cf. Quodlibetum II, 7 [Parma ed., IX, 478]).

[89] ST, II-II, 40, 2, obj. 3 (author's translation). Pope Adrian's complaint to Charlemagne was that the Christian king of the Lombards was usurping papal territories (John E. Breshnahan, "Adrian I, Pope," New Catholic Encyclopedia, 1967, I, 144-145).

> Among the faithful people carnal wars are to be referred, as regards their end, to the divine spiritual good, to which clerics are assigned. Therefore it pertains to clerics to dispose and induce others to wage just wars.[90]

Lacking the material sword, the Church called on lay princes to wage war. Thomas did not delineate in detail the occasions for such collaboration between priest and prince; but it seems clear that the causes of such wars were not necessarily or exclusively religious.[91]

In addition to these two manifestations of ecclesiastical authority in military matters Thomas noted a third: the Church was officially represented even at the battle front.

> By the authority of their superior, prelates and clerics can be present in wars, not indeed to fight with their own hands but to aid spiritually those who fight justly--with exhortations, absolutions, and other spiritual helps.[92]

Again in this case Thomas' focus was not exclusively on religious wars. He did stipulate, however, that the Christian soldiers to whom the Church ministered should be fighting "justly."[93] Presumably the Church could also withhold such a ministry--including the sacrament of extreme unction--from soldiers who in its judgment were fighting unjustly.

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[90] ST, II-II, 40, 2, ad 3.

[91] Thomas identified the wars as "carnal" or "just" and noted that they could be "referred" to the "divine spiritual good" (ST, II-II, 40, 2, ad 3; cf. II-II, 124, 5, ad 3). In such contexts the term "just" seemed to transcend its normal relation to the natural moral virtue of justice and to be transformed into an attribute of "divine righteousness" (ST, II-II, 105, 6).

[92] ST, II-II, 40, 2, ad 2 (author's translation).

[93] See n. 91 above.

Other participants

In the above discussion Thomas distinguished rather clearly between two types of authority for war: the secular prince and the Church official. A similar natural-supernatural distinction recurred repeatedly in his description of representative participants in warfare.[94]

Common citizen

Unlike the prince, the offended average citizen had recourse to a system of administrative justice. Therefore Thomas denied him the right to declare private war.

> It does not pertain to a private person to declare war because he can pursue his rights in the tribunal of his superior. Similarly, calling the people together, which is necessary in warfare, does not pertain to a private citizen.[95]

Thomas' only concession to the private citizen was to allow self-defense in the face of actual violent attack by an unjust aggressor. In such a situation, he argued, the victim of attack could lawfully attempt to save his life by means of a moderate defense, but he was obliged not to intend the death of his attacker.[96]

In contrast, official authorization by the prince translated a man from the role of private citizen into the role of soldier. The new role related the soldier to a larger, common good and made it possible for him to kill dispassionately. In fact, Thomas could refer to the soldier as a sword, a mere instrument in the hands of the war-making prince.[97] In his official role, the soldier could lawfully intend the death of the enemy, provided that he referred such killing to the public good.[98]

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[94] The ordained clergyman in the role of chaplain was briefly mentioned in connection with the authority of the Church. He is treated below because of important comparisons between his role and that of the lay soldier.

[95] ST, II-II, 40, 1 (author's translation).

[96] ST, II-II, 64, 7. In allowing the unintended killing of an aggressor in self-defense, Thomas took a less restrictive position than had Augustine. See ST, II-II, 64, 7, obj. 1.

Thomas also discussed the participation of the lay citizen in religious wars. On at least eight separate occasions he considered the layman's relation to crusade-vows.[99] Twice he raised the question: "Should a Man Make a Crusade-vow against His Wife's Wishes if It Is to Be Feared that She Will Be Unchaste?"[100] In his early Commentary on the Sentences Thomas argued that a husband might contravene the wishes of his wife in taking a crusade-vow.[101] However, in a quodlibetal disputation

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[97] ST, II-II, 64, 3, ad 1.

[98] ST, II-II, 64, 7.

[99] The texts were: CS, IV, d. 20, qu. 1, art. 2, qu^{a} 3, ad 4; IV, d. 20, qu. 1, art. 3, qu^{a} 3, ad 2; IV, d. 32, qu. 1, art. 4, ad 1; Quodlibetum II, 16; IV, 11; V, 14; ST, II-II, 88, 12, obj. 1 and ad 3; 189, 3, obj. 3 and ad 3.

[100] CS, IV, d. 32, qu. 1, art. 4, ad 1; Quodlibetum IV, 11 (Parma ed., IX, 513; author's translation).

[101] CS, IV, d. 32, qu. 1, art. 4, ad 1. By so arguing, Thomas was accepting the view of Pope Innocent III. In the decree Ex multa from the year 1201 Innocent had reversed long church tradition by providing that

> Men might freely make and fulfill the crusade vow . . . even should their wives not give assent to the proposal. . . .

Innocent reversed earlier tradition because of an urgent need for soldiers to fight the Fourth Crusade. His decree later of 1271 he reversed his earlier opinion on moral grounds.

> The things which are of necessity should not take precedence over those which are matters of one's own free will. . . . But out of necessity it is incumbent on the man to take care of the wife, because "the head of the wife" is the "man," as I Corinthians 11:3 says. But his making a crusade-vow to cross the sea is subject to his own will. Therefore if the wife cannot follow because of some legitimate impediment and it is to be feared that she will be unchaste, the husband should not be advised to take the crusade-vow and abandon his wife.[102]

In the Summa theologiae Thomas attempted to assess the relative merits of making a crusade-vow and entering a monastic order. Following the cannon law, he asserted that the perpetual vow to enter religion was greater than the temporal vow to go on a crusade.[103] But if Thomas relativized the importance of the crusade-vow in relation to other duties, it is nonetheless clear that he assigned to it a high value. In answer to a standard thirteenth-century question he argued that a man dying on his return from a crusade received more merit than one who died before reaching his destination.[104] But he also asserted that

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became a part of the canon law: it was included in the Decretals of Gregory IX, III, 34, 9 (James A. Brundage, "The Crusader's Wife: A Canonistic Quandry," Studia Gratiana, XII [1967], 434-435).

[102] Quodlibetum IV, 11 (Parma ed., IX, 513; author's translation). Brundage, with aid from John Noonan, first pointed out this change in Thomas' position ("Crusader's Wife," pp. 438-441). What Brundage and Noonan do not note is that Thomas' teacher Albertus had taken the same position as the later Thomas in his CS, IV, d. 37, art. 6, ad 3 (Jammy ed., XVI, 738).

[103] ST, II-II, 88, 12, obj. 1; 189, 3, obj. 3 and ad 3; cf. Decretals of Gregory IX, III, 34, 4.

[104] Quodlibetum V, 14 (Parma ed., IX, 534-535).

the mere making of a crusade-vow, even if one died before setting out on crusade, could be efficacious for the remission of all penalties for sin.[105]

Priest

The role of the priest in relation to war differed significantly from that of the layman. As noted in the above discussion of authority, Thomas accepted the Church's practice of assigning priests as chaplains, finding warrant for the chaplaincy-role of priests in certain Old Testament texts. In the Deuteronomic war-code priests had heartened the soldiers by promising divine assistance.[106] At the Battle of Jericho the priests had blown the sacred trumpets.[107]

But Thomas had to admit that Old Testament priests had done more than encourage soldiers and blow trumpets! The Levites had slaughtered 23,000 idolaters; the priest Phineas had killed a sexual offender; Samuel had cut down King Agag of the Amalekites; and Elijah had exterminated the prophets of Baal.[108] Weren't these actions perfectly valid precedents for thirteenth-century Christian priests?

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[105] Thomas did require that this provision be stipulated in the papal letter authorizing the crusade-indulgence (Quodlibetum II, 16 [Parma ed., IX, 484]; cf. ST, II-II, 189, 3, obj. 3).

[106] ST, I-II, 105, 3; Deuteronomy 20:2.

[107] ST, II-II, 40, 2, ad 2; Joshua 6:4.

[108] ST, II-II, 64, 4, obj. 1.

Thomas' answer was a decisive no. He supported this negative answer by adducing legal, sacramental, and Christological arguments against clerical participation in warfare. In the first place, Thomas noted, Christian priests were ministers of the New Law, not the Old.

> The Old Law instituted the penalty of blood, but not the New Law. Thus there is no parallel between the ministers of the Old Law and those of the New Law, which is an "easy yoke and a light burden."[109]

The sacramental argument was that Christian priests had a special relation to the Eucharist, a sacrament commemorating the shedding of Christ's blood. Because of this special relation, the canon law stipulated that persons who shed blood were disqualified from becoming or remaining priests. Thomas accepted the canon-law teaching on this point.

> All of the clerical orders are ordained to ministry at the altar, on which the passion of Christ is represented sacramentally. . . . Hence it is not fitting for them to kill or shed blood. . . .[110]

Taken by itself, the sacramental reason might have sounded like mere superstition.[111] But it seems clear that the manner in which Christ suffered was of deep significance to

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[109] CS, IV, d. 25, qu. 2, art. 1, qu^{a} 2, ad 1 (Parma ed., VII/2, 909; author's translation) [=ST, Supplementum, 39, 4, ad 1]. Cf. ST, II-II, 64, 4.

[110] ST, II-II, 40, 2 (author's translation); cf. II-II, 64, 4; III, 89, 3; CS, IV, d. 25, qu. 2, art. 2, qu^{a} 2 [=ST, Supplementum, 39, 4].

[111] Gilby (Political Thought, p. 42) and Bainton (Christian Attitudes, p. 109) tend to interpret Thomas' position in this fashion.

Thomas. On one occasion he reminded priests that the Eucharist represented

> the passion of the Christ who was slain, "who when he was struck did not strike back" (I Peter 2:23).[112]

In a similar passage Thomas urged priests not to kill because

> homicide is most contrary to peace and those who commit homicide are more conformed to the killers of Christ than to Christ himself who was killed-- to whom all ministers of the aforesaid sacrament ought to be conformed.[113]

We have noted that Thomas accorded to the layman the right of self-defense. In opposition to Augustine he argued that a layman might lawfully kill an unjust aggressor in defense of his own life, provided that he did not intend to kill the aggressor and that his defense were moderate.[114] For the priest a more stringent ethical standard was in force. Thomas conceded that a priest might kill in self-defense without guilt or sin; but, following the canon law, he maintained that a priest who killed in self-defense incurred irregularity, thus disqualifying himself from further sacerdotal ministry.[115] In Thomas' view, the only case in which a priest's killing a man did not affect his priestly status was that of purely accidental homicide.[116]

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[112] ST, II-II, 64, 4 (author's translation).

[113] CS, IV, d. 25, qu. 2, art. 2, qu^{a} 2 (Parma ed., VII/2, 909; author's translation) [=ST, Supplementum, 39, 4].

[114] ST, II-II, 64, 7; see n. 96 above.

[115] ST, II-II, 64, 7, obj. 3 and ad 3; cf. II-II, 40, 2; III, 89, 3; CS, IV, d. 25, qu. 2, art. 2, qu^{a} 2 [=ST, Supplementum, 39, 4]. Thomas noted that priests were also prohibited from inflicting capital punishment (ST, II-II, 64, 4, ad 3) and from testifying in capital cases (II-II, 71, 1, obj. 3 and ad 3).

There is one passage in the Commentary on the Gospel of Matthew in which Thomas seems to have qualified somewhat his stringent position regarding priests and self-defense. The text of the commentary on Matthew 5:39 reads:

Military orders

The members of a military order occupied a position midway between that of a layman and that of the ordained priest. As a member of a religious order he was bound to the vows of poverty, chastity, and obedience. But not having received ordination, he was technically a layman.[117]

> Or [an injury] is repelled in a case of urgent necessity, for example, when bodily harm cannot be avoided by flight or by any other impediment. And then it is repelled either without arms--this mode is permitted to clerics and laymen; or with arms--this mode is not lawful for clerics, though it is for laymen in the face of flagrant wrong-doing with the moderation of a blameless defense, as the law says. And thus [non-resistance] is a precept for clerics, a counsel for laymen (Parma ed., X, 65; author's translation; text referred to by Gmür, Thomas von Aquino, p. 12).

However, recent scholarship seems to deny that this section of the Commentary on Matthew is from Thomas' hand (Chenu, Toward Understanding, p. 247, n. b).

Less than fifty years after Thomas' death Pope Clement V reversed the position of Thomas and classical canon law. Clement declared that a man did not become irregular

> who, unable otherwise to avoid death, kills or maims his attacker (Clementines, V, 4; author's translation [Friedberg ed., II, col. 1184]).

[116] CS, IV, d. 25, qu. 2, art. 2, qu^{a} 2, ad 3. Thomas stipulated that the accidental homicide could not be the result of either carelessness or unlawful action.

[117] ST, II-II, 186, 6. That the member of a military order was not ordained can be inferred from a comparison of ST, II-II, 188, 3 and II-II, 40, 2. Note that in Thomas' view even a member of a religious order was not necessarily required to show love to his enemy in the realm of overt action (ST, II-II, 186, 2; cf. I-II, 108, 4).

Conscious that military orders were a relatively modern phenomenon, Thomas sought to provide justification for their establishment in both theoretical and historical terms. Since such orders were classified as a type of religious order, Thomas argued that they were not to be directed to "any worldly purpose" but rather toward (1) service to the neighbor and (2) service to God. He found biblical precedent for the establishment of such orders in the military exploits of the Maccabees, who fought both for the nation of Israel and "for the laws and the holy places."[118] According to Thomas, similar considerations had led to the recent institution of military orders. In a rare historical note he commented:

> It was necessary for religious orders to be established for military service because of the failure of secular princes in resisting unbelievers in certain lands.[119]

As a warrior for God and neighbor the member of a military order was not a self-contained authority; nor was his order as a whole. Indeed, in his need for proper authorization the member of an order was on the same footing as the private citizen. Thomas expressly stipulated that he could wage war only "by the authority of princes or of the Church."[120]

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[118] ST, II-II, 188, 3.

[119] ST, II-II, 188, 4, ad 5. The word defectus, which I have translated as "failure," could also mean "inability."

[120] ST, II-II, 188, 3, ad 4.

Relation to Background

Socio-political context

In according war-making authority to a plurality of princes Thomas implicitly denied the supreme political authority of the Holy Roman Emperor. This denial entailed the rejection of a long-established tradition, one that included heroic figures like Constantine and Charlemagne. Comments scattered throughout the Summa theologiae reveal Thomas' keen awareness of the Roman Empire and of its important role in pre-Christian and Christian Western history.[121]

But Thomas also kept his eyes open to contemporary affairs. Emperor Frederick II, whom his own family had once supported, had later emerged as a heretic and the mortal foe of the papacy. In contrast, the Christian kings of Thomas' day were both increasingly powerful and generally supportive of the Church. It is scarcely surprising, therefore, that he rejected the imperial, hierarchical conception of political authority and opted for a de-centralized or pluralistic theory.

It is possible to identify some of the "cities, provinces, and kingdoms" which Thomas characterized as "perfect communities." When he spoke of "kingdoms," he no doubt thought primarily of his native Kingdom of Sicily and of the Kingdom of France, where he was a student and teacher for ten years. This category may also have included the Kingdom of Cyprus, to whose monarch he addressed the work On Kingship.[122] The "cities" of which he spoke were probably the city-states, or communes, of northern Italy. His modern biographers record that Thomas visited several of these communes, including Milan, Lucca, and possibly Florence and Pisa.[123] Although he accorded to such "cities" the title of perfect community, he noted that in military matters they might need mutual assistance.[124] The word "province" was a rather indefinite term in the thirteenth-century political vocabulary. When Thomas employed it, he probably referred to a collection of cities and rural areas somewhat smaller than a kingdom. His teacher Albertus had applied the term to such Italian subdivisions as Lombardy, Tuscany, and Apulia.[125]

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[121] ST, II-II, 10, 10, ad 2; 10, 12; 40, 2, obj. 3; 104, 5; 188, 3, obj. 4; III, 35, 8.

When Thomas discussed the loss of political authority on the ground of apostasy, his very language was reminiscent of the Church's confrontation with Emperor Frederick II. At the Council of Lyons in 1245 Pope Innocent IV had formally deposed the

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[122] A. P. D'Entrèves, "Introduction," in Aquinas: Selected Political Writings, pp. XXV-XXVI. Other political entities which Thomas would probably have recognized as kingdoms were the Holy Roman Empire; England; the Spanish kingdoms of Castile and Leon and of Aragon; and certain Moslem principalities in North Africa.

[123] Walz, Saint Thomas Aquinas, pp. 113, 90, 139, and 142. Waley notes that in the thirteenth century northern and central Italy was one of the two European regions in which "towns were autonomous republics" (Later Medieval Europe, pp. 20-21).

[124] On Kingship, I, 1 (Phelan trans., pp. 9-10).

[125] Albertus had also noted that Spain contains "several provinces and kingdoms" (De natura locorum, III, 1ff.; IX, 566ff.; cited by I. T. Eschmann in notes on Thomas Aquinas, On Kingship, I, 1 (Phelan trans., p. 10, n. 23).

Emperor, primarily for religious offenses. In part the deposition edict read as follows:

> He [Frederick] has abjured God on many occasions; he has wantonly broken the peace which had been reestablished between the Church and the Empire; he has committed sacrilege by causing to be imprisoned the Cardinals of the Holy Roman Church . . . ; he is also accused of heresy not by doubtful and flimsy but by formidable and clear proofs."
>
> . . . .
>
> We absolve for ever all who owe him allegiance in virtue of an oath of fealty from any oath of this kind; and we strictly forbid by Apostolic authority that any one should obey him or look upon him henceforce as king or Emperor, and we decree that whoever shall in the future offer him advice, help or goodwill as if he were Emperor or king shall fall "ipso facto" under the binding force of excommunication.[126]

Thomas' comments on the authority of the Church in military matters were also abundantly illustrated in thirteenth-century history. As noted above, during his lifetime Roman Catholic popes launched or supported crusades against Moslems in the Holy Land and Spain, pagans in Prussia, schismatics in Byzantium, heretics in southern France, and political opponents in Italy. To recruit participants in these campaigns the papacy sent crusade-preachers, chiefly Dominican and Franciscan friars, to every corner of Europe. The friars' aim was to induce listeners to make crusade-vows. Albertus, Thomas' teacher, received a special papal commission to preach a Near Eastern crusade throughout the German-speaking territories. In order to defray the considerable expenses of these campaigns, thirteenth-century popes developed an elaborate financial apparatus. Their chief sources of revenue were a compulsory income tax imposed on the secular clergy and the proceeds from the redemption of unfulfilled crusade-vows.[127]

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[126] "Bull of Pope Innocent IV deposing the Emperor Frederic II, July 17, 1245," in Sidney Z. Ehler and John B. Morrall, eds. and translators, Church and State through the Centuries: A Collection of Historic Documents with Commentaries (Westminster, Md.: Newman Press, 1954), pp. 81, 86.

On numerous occasions during the century ecclesiastical officials "disposed," "counseled," or "induced" secular rulers to wage war. Emperor Frederick II, who had made a crusade-vow in his youth, was repeatedly urged to fulfill it; after ten years of persistent badgering by Popes Honorius III and Gregory IX, the reluctant Emperor set out on an expedition to the East.[128] Pope Innocent IV assisted King Louis IX both financially and organizationally in the preparation of the king's Egyptian Crusade.[129] During prolonged negotiations Pope Urban IV urged Charles of Anjou to undertake a crusade against the Hohenstaufens in the Kingdom of Sicily; when the papal price was right, Charles agreed.[130] In addition, as temporal rulers of the Papal State, thirteenth-century popes rather frequently requested military aid from their secular vassals in order to cope with local political disputes.[131]

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[127] Throop, Criticism, pp. 73-75, 82-94.

[128] Thomas C. Van Cleve, "The Crusade of Frederick II," in Wolff and Hazard, eds., The Later Crusades, pp. 430-451.

[129] Strayer, "Crusades of Louis IX," p. 490.

[130] Strayer, "Political Crusades," p. 364.

[131] Waley, Papal State, pp. 276-279. Waley has counted 113 such summonses for the period between 1234 and 1303.

Thomas also noted the presence of the Church at the actual scene of battle in the person of military chaplains. Quite possibly he thought of members of his own Dominican Order, who had accompanied several crusades and who were closely associated with the Teutonic Knights in Prussia.

Connections can also be drawn between thirteenth-century history and Thomas' discussion of other participants in warfare. At least two of his brothers were lay soldiers in the imperial army. One of them, Reginald, supported the Emperor Frederick for a time against a papal crusade, while a third, Aimo, seems to have participated militarily in the papally-sponsored crusade against Frederick's successors. Numerous relatives of the family of Aquino served as soldiers on both sides of these conflicts.

In describing the historical origin of military orders, Thomas noted that they had been established "because of the failure of secular princes in resisting unbelievers in certain lands." The "certain lands" in which the various military orders were most active can be more precisely identified as Palestine, Spain, and Prussia.

What emerges from these specific incidents and examples is a general pattern of political authority in the thirteenth century. While not claiming universal authority in temporal affairs,[132] the papacy exerted a strong political influence

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[132] On this point see the pertinent comments of Brian Tierney in "The Continuity of Papal Political Theory in the Thirteenth Century: Some Methodological Considerations," Mediaeval Studies, XXVII (1965), 227-245.

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within Christian Europe. The most powerful Christian rulers were generally loyal to the Church. Exceptions to this rule, like the Emperor Frederick and his successors, met a rather unhappy fate. In such an era the various municipal, provincial, and national common goods were, to a significant extent, harmonized within the larger common good of Christendom. For Thomas this temporal concord symbolized, and was guaranteed by, the existence of the universal and eternal Common Good.[133]

Intellectual background

There was unanimous agreement among theologians and canon lawyers that a proper authority was required for waging war. Among theologians there had been repeated stress on the need for authority since the days of Augustine.[134] Canon lawyers devoted more attention to the question of authority than to any other.[135] Thus it is not surprising that Thomas discussed the question of authority.

Also prevalent in Thomas' intellectual background was an emphasis on two kinds of authority for war: the authority of the secular ruler and the authority of the Church. While theologians were generally content merely to state that proper authority was required, canon lawyers explicitly discussed the duality of authorities. Virtually from Gratian on, they treated the war of the prince and the war of the Church as parallel forms of permissible war.[136] Thus there was ample precedent in the tradition for Thomas' references to "the authority of princes or of the Church."[137]

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[133] In Thomas' view the universal and eternal Common Good, or God, stood above all partial and temporal common goods as their ultimate criterion. Thus the function of the divine Common Good in relation to the political common good was analogous to the function of the eternal law in relation to natural and human law (ST, II-II, 23, 7; 26, 3; I-II, 91, 1-4; cf. I-II, 21, 4).

[134] See Augustine, Contra Faustum, 22, 74-75; Alexander of Hales, Summa Theologica, Bk. III, Pt. 2, Inq. 3, Tract. 2, Sec. 2, Qu. 1, Tit. 3, Membr. 3, Cap. 1; Bonaventura, Commentary on the Gospel of Luke, III, 32-34.

[135] Russell, "Medieval Theories," chaps. 4 and 5, passim.

In formulating his general theory of political authority Thomas implicitly rejected the extreme papalism represented by certain canon lawyers. Alanus Anglicus and Hostiensis had argued that the temporal sword was awarded by the Pope to Christian princes only. Strongly opposed to this position was the viewpoint of the canonist Innocent IV. Having arrived at a kind of natural-law conception of political authority through the study of Roman Law, Innocent asserted that legitimate governments could be established among all peoples, even among infidels.[138] In his emphasis on the natural basis of political authority Thomas closely approximated Innocent's theoretical acceptance of non-Christian princes.

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[136] In his discussions of Gratian, the Decretists, and the Decretalists, Russell was obliged in each case to discuss political and ecclesiastical authority in parallel fashion. Sicard of Cremona, Raymond of Pennaforte, Hostiensis, and Monaldus explicitly paralleled the two kinds of authority, using formulas like "the authority of the prince or of the Church" ("Medieval Theories," chaps. 4 and 5; pp. 187-189; 208-212; 217-227; 269-282; 303-326; for the four theorists specifically mentioned see pp. 248-249, n. 142; p. 328, n. 4; p. 368, n. 183; and p. 328, n. 6).

[137] ST, II-II, 188, 3, ad 4; 188, 4, ad 2.

[138] Brian Tierney, The Crisis of Church & State, 1050-1300 (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1964), pp. 123, 152-156; cf. Gilby, Political Thought, pp. XXII-XXIII, and Russell, "Medieval Theories," p. 225.

Closely related to this general issue was the specific question: Which princes have authority to wage war? The brief comments of the theologians added nothing to Augustine. Alexander of Hales required a "just authority"; Bonaventura said simply that the person declaring war must "have power."[139] If the canon lawyers discussed the question in more detail, they also disagreed in their conclusions. Three main views emerged. Hostiensis, a canon lawyer contemporary with Thomas, represented the hierarchical, imperial viewpoint. In his view only the Emperor, the supreme political ruler within Christendom, could authorize military action by other Christian princes. Innocent IV and most of the Decretalists accorded the war-making power to all princes possessing superior authority. Even more generous was William of Rennes, who extended the right to make war to any feudal lord having vassals under him.[140] Thomas' position was clearly closest to the mediating theory of Innocent IV and most of the Decretalists.[141] His chief advance over the canon lawyers was

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[139] See the references in n. 134 above.

[140] For this breakdown I am indebted to Russell, "Medieval Theories," pp. 302-303; cf. Tierney, Crisis, pp. 150-157.

[141] Many of the Decretalists were quite nationalistic (Tierney, Crisis, pp. 159-163). Their nationalism may explain in part their eagerness to locate authority to wage war only in superior, i.e., national, princes. It is possible to identify more precisely the political authorities which the Decretalist majority had in mind. According to Russell,

"Recent scholarship has concluded that the Decretalists the employment of Aristotelian categories in describing the "prince with superior authority."

There was no systematic discussion by the canonists concerning the loss of political authority. However, the thirteenth-century papal-imperial confrontation was echoed in the canon law as well as in Thomas' discussion of apostasy. Commenting on a struggle of the Church against an "iniquitous prince," namely Frederick II, Hostiensis wrote:

> In this case, therefore, against an iniquitous prince, all the faithful and catholics are bound to adhere to the church. The church can in such a case absolve even those who are vassals of the emperor from having to observe an oath already in force.[142]

The authority of the Church to wage war received little theoretical attention from the theologians prior to Thomas. The crusade-vow was considered by Albertus Magnus to be "a vow necessary for the liberation of the Holy Land."[143] That this was not idle speculation on Albertus' part is indicated by his activity

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variously considered the Holy Roman Empire, Italian city-states, and the national kingdoms of England, France, and Spain as patriae worthy of defense in a just war. . . ." ("Medieval Theories," p. 267).

The canon lawyers had also applied their casuistry to other questions concerning the authority to make war. Can a subordinate authority wage war against one of his subordinates? Can a subordinate authority wage war against an external enemy? The consensus of their views was that war in the full sense, that is, with the right to take booty and enslave prisoners, could only be waged by a superior authority against another superior authority (Ibid., pp. 301-302).

[142] Hostiensis, Commentaria, on the Decretals, II, 13, 12, paragraphs 24-25; quoted by Russell, "Medieval Theories," p. 360, n. 151 (author's translation).

[143] Commentary on the Sentences, IV, d. 37, art. 6, obj. 3 and ad 3 (Jammy ed., XVI, 738).

as a crusade-preacher among German-speaking Christians.

Not surprisingly, the lawyers of the Church devoted a great deal of attention to the authority of the Church. Their discussions of Church authority in relation to war went through two stages. In the first stage, which began with Gratian's Decretum, wars for religious purposes were closely associated with the more general question of just war. Virtually all of the canon lawyers referred to the "authority" of the Church or of various Church officials to advocate or declare war.[144] During the second stage Innocent IV and Hostiensis refined the conception of war fought by the authority of the Church. They elaborated a theory for the crusade as a unique type of religious war--a war to be declared only by the Pope and to be accompanied by an indulgence.[145]

Thomas' views on the authority of the Church in relation to war reflected an awareness of both stages of canonistic theory. While accepting the general competence of clerics to "dispose and counsel" princes to make war, he also discussed the crusade as a unique kind of religious war in which participants received a papally-authorized crusade-indulgence.

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[144] The following canon lawyers referred to the general authority of the Church in relation to war: Sicard of Cremona, Alanus, Laurentius, Tancredus, Johannes Teutonicus, Raymond of Pennaforte, Monaldus, and Hostiensis. This general authority of the Church applied to both religious and non-religious wars (Russell, "Medieval Theories," chaps. 4 and 5, passim).

[145] Villey, La croisade, pp. 255-262; Russell, "Medieval Theories," pp. 322-326.

The respective roles of other participants in war were also discussed by Thomas' intellectual predecessors. Among theologians and canon lawyers there was unanimous agreement that the private citizen or soldier could not wage war without official authorization.[146] Thomas agreed with his predecessors both on the need for authority and the right of self-defense, although he seems to have placed less stress on the defense of property.

Despite the increasing use of mercenaries in armies of the thirteenth century, the issue of mercenary-service received relatively little attention from the theologians and canonists. At the Third Lateran Council in 1179 Pope Alexander III had condemned certain groups of mercenaries--Brabançons, Aragonese, Navarese, Basques, Cottereaux, and Triaverdini--for attacking churches and defenseless people, sparing neither age nor sex.[147] On the basis of Alexander's anathema, Peter the Chanter and the theologians in his circle debated whether all mercenary-service was unlawful. Robert of Courson gave the fullest statement of the Paris theologians' position. Noting John the Baptist's command that soldiers should be content with their wages (Luke 3:14), he argued that if a war were just, mercenary soldiers were allowed to accept a fair price for their services.[148] However, discussions of the mercenary-issue by other thirteenth-century scholars were rare, perhaps in part because Alexander's condemnation was omitted from the official canon-law collection.[149] Thomas himself did not explicitly raise the issue of mercenary-service.

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[146] For the views of the theologians see the references in n. 134 above. The views of the canon lawyers on self-defense are analyzed by Stephan Kuttner, Kanonistische Schuldlehre von Gratian bis auf die Dekretalen Gregors IX., Studi e Testi, Vol. LXIV (Rome: Biblioteca Apostolica Vaticana, 1935), pp. 334-359; cf. Regout, La doctrine, pp. 140-148, and Russell, "Medieval Theories," pp. 204-207, 261-263.

[147] Baldwin, Peter the Chanter, I, 221.

In contrast, the question of clerical military service was universally discussed; according to the consensus-view clerics were forbidden to shed blood. Among the theologians this tradition stretched back to the time of Ambrose and Augustine.[150] Gratian's *Decretum* included several texts which unequivocally rejected clerical participation in war.[151] For the most part later canon lawyers accepted the authority of these texts.[152]

Gratian and the later canonists did, however, hold open the possibility of indirect clerical participation. In Gratian's words,

> Priests ought not to use arms by their own hands; but it is lawful for them to exhort others to use

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[148] *Ibid.*, pp. 221-222.

[149] In the *Decretals of Gregory IX*, V, 7, 8, Alexander's general condemnation of heretics was included, but the passage on the Brabançons and other mercenaries was omitted (Friedberg ed., II, col. 780).

[150] Ambrose, *Sermo contra Auxentium*, n. 2; cited by Gratian, *Decretum*, Pt. II, C. 23, qu. 8, c. 21; Augustine, *Epistola* 189, 5. See also the references in n. 134 above.

[151] Pt. I, D. 50, cc. 6 and 8; Pt. II, C. 23, qu. 8, several canons.

[152] The exceptions to this general rule which some canon lawyers made in the case of minor orders and certain religious wars are noted by Russell, "Medieval Theories," pp. 212-215.

> them for the defense of the oppressed or for attacking the enemies of God.[153]

Later canon lawyers agreed that priests could "invite the faithful to fight against heretics"[154] or exhort lay princes to wage just wars.[155] Thomas' position on the issue of clerical participation in warfare was thus precisely in line with both ancient tradition and recent refinements of that tradition by the canon lawyers.

Military orders seem to have been largely ignored by theologians and canon lawyers prior to Thomas. Without raising the question whether such orders ought in principle to exist, the Franciscan theologian Roger Bacon described and deplored the brutal excesses of the Teutonic Knights in Prussia.[156] Thomas' dispassionate analysis of the origin and function of military orders contrasted rather sharply with Roger's passionate critique.

Relation to Ethical Theory

As noted above, Thomas distinguished the object, circumstances, and end of the moral act. In discussing the whether-question he focused on the act of waging war as a moral object. In contrast, his analysis of the who-question drew attention to certain circumstances of permissible war, specifically the who-circumstances. When he required a proper authority for the waging of war, Thomas specified one of the due circumstances. Including this specification, his general ethical proposition might have taken the following form:

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[153] Decretum, Pt. II, C. 23, qu. 8, prologue to c. 7 (Friedberg ed., I, col. 954).

[154] Summa: Et Est Sciendum, on D. 36, c. 3; cited by Russell, "Medieval Theories," p. 248, n. 138.

[155] Russell, "Medieval Theories," p. 310.

[156] See Chap. I, n. 117.

> It is morally right to wage war (object), provided that the war is declared by the authority of the prince or the Church (circumstance), and provided that other due circumstances are observed and a proper end is intended.[157]

In his discussion of other participants in war Thomas introduced the quasi-moral category of irregularity, thereby specifying a further who-circumstance:

> It is morally right for a layman (circumstance) to wage war (object), provided that the war is declared by the authority of the prince or the Church (circumstance), and provided that other due circumstances are observed and a proper end is intended.

It is clear from Thomas' discussion of the who-question that he regarded proper authority and proper status as necessary conditions for the morality of war; but it is also clear that he did not regard them as sufficient conditions. The other necessary conditions remained to be treated in his analysis of the when and how of permissible war.

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[157] Alternatively, one could argue that the object, war, implies the presence of the proper authority and that otherwise the object would be designated as sedition or strife. However, in my view it is preferable not to build such presuppositions into the term war. On this point see Robert H. Dailey, Introduction to Moral Theology (New York: Bruce Publishing Co., 1970), p. 116.

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Exposition of Thomas' Thought

Modern analyses of Thomas' thought concerning war usually name "just cause" as one of his criteria for permissible war.[158] Such analyses are correct but incomplete. Just as Thomas distinguished two levels of authority for permissible war, so he distinguished two levels in his discussion of the proper cause of war. He did indeed specify a just cause as one of the criteria for just war.[159] But he also required a "suitable cause" for the granting of a crusade-indulgence, namely,

> a cause pertaining to the honor of God, or to the necessity or utility of the Church.[160]

On two occasions Thomas himself explicitly indicated the parallel between the natural and supernatural levels of the cause-question. In an article of the Summa theologiae he specified two proper causes for war: wrongs done to one's neighbor and wrongs done to God.[161] Similarly, Thomas' early Commentary on the Sentences stipulated that the soldier's office should be used "for the utility of the Church and the commonwealth (reipublicae)."[162]

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[158] Fagothey, Right and Reason, pp. 446-447; Regout, La doctrine, p. 83.

[159] ST, II-II, 40, 1.

[160] Quodlibetum II, 16 (Parma ed., IX, 484; author's translation).

[161] ST, II-II, 188, 3, ad 1.

[162] CS, IV, d. 16, qu. 4, art. 2, qu^{a} 3 (Parma ed., VII/2, 767; author's translation). Cf. Thomas' citation of a text

As the above quotations suggest, Thomas formulated the cause of war in two ways. Phrased negatively, the cause of war was an offense committed by the other side. Conversely, the positive formulation of cause focused attention on the need of, or the prospective benefit to, one's own side. In either formulation, what Thomas termed the "cause" of war might have been alternatively described as the "reason" for which a war was fought.[163]

Just cause of political war

In his ex professo treatment of just war Thomas defined just cause in the following terms:

> A just cause is required, namely, that those who are attacked merit the attack because of some fault (propter aliquam culpam).[164]

The key word in this formula, culpa, focused on the offense committed by the other side rather than on the need or benefit of one's own side.

The concept of culpa, or fault, played an important rolé in Thomas' general conception of moral action: it was his basic term for moral evil. Since he viewed the activity of the will (voluntas) as the most significant aspect of all moral

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which included both religious and political causes for war (ST, II-II, 40, 2, obj. 4).

[163] In Aristotelian terms the "cause" or war was thus a final cause. On this point see [Marie-] A[lbert] Michel, Questions théologiques du temps présent, Vol. I: Questions de guerre d'après saint Thomas d'Aquin (Paris: Gabriel Beauchesne, 1918), pp. 13-15.

[164] ST, II-II, 40, 1 (author's translation).

action,[165] Thomas applied the term culpa only to voluntary actions.

> Every disordered act can be called a sin (peccatum) of nature, of art, or of morality. But sin does not have the aspect of fault (culpa), unless it arises from what is voluntary; for a disordered act is not imputed to someone as fault (ad culpam) unless it arises from what is in his own power.[166]

Thus when Thomas used the technical term culpa in his just-cause formula, he was indicating that the enemy's offense had to be voluntary or wilful rather than involuntary or accidental. His employment of the word culpa focused primary attention on the moral question of subjective guilt rather than on the objective violation of law or custom.[167]

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[166] De malo, II, 2, in Questiones disputatae, ed. by Raymundus Spiazzi, et al. (2 vols.; 9th ed.; Turin: Marietti, 1953), II, 469 (author's translation). Thomas made the same point in ST, I-II, 21, 2, and in the Summa contra Gentiles, III, 10. It should be noted that Thomas regarded certain kinds of ignorance as voluntary and therefore culpable. Specifically, Thomas held the moral agent responsible for deliberately refusing to seek relevant information and for failing to know "what he ought to know." For Thomas what the agent "ought to know" included the general principles of law (ST, I-II, 6, 8; 76, 3 and 4; cf. II-II, 59, 2; 71, 3). This application of the term culpa to the realm of knowledge as well as to the realm of action tended to minimize the possibility of bona fide errors of judgment. On this point see Regout, La doctrine, p. 92.

[167] The thesis of this paragraph has been the subject of vigorous controversy. Alfred Vanderpol argues that for Thomas "a grave fault is the primordial and necessary element of the cause" (La doctrine scolastique, p. 251). Franziskus Stratmann maintains the same position in different language: he asserts that Thomas insisted on a formal, not merely a material, fault of the enemy (Church and War, p. 79). Bruno de Solages accepts this interpretation of Aquinas but minimizes Thomas' insistence on subjective guilt (La théologie de la guerre juste [Paris: Desclee de Brouwer, 1946], pp. 18-19). On the other hand, Robert Regout and Yves de la Brière argue that Thomas might have accepted a purely objective offense as a just cause in certain cases (Regout, La doctrine, pp. 90-93; La Brière, Le droit de juste

In Thomas' ethical system the concept of *culpa* was closely correlated with the concept of *poena*, which can be translated either as "penalty" or as "punishment."

> No penalty (*poena*) is due except for a fault (*culpae*).[168]

> Weakness does not merit (*meretur*) a penalty (*poenam*), which is due for a fault (*culpae*), but rather mercy and pardon.[169]

These statements about *poena* make possible a restatement of the just-cause formula. In the original formula Thomas stipulated that

> those who are attacked merit the attack because of some fault (*culpam*).[170]

A comparison of this formula with the last previous quotation

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guerre: tradition théologique, adaptations contemporaines, Bibliothèque internationale de philosophie du droit, Vol. V [Paris: A. Pedone, 1938], pp. 33-34). Joan Tooke remarks that both Vanderpol and Regout attribute to Thomas positions similar to their own. Miss Tooke, a pacifist, accepts the subjective theory (Just War, p. 147). R. S. Hartigan agrees that Thomas required "clear knowledge of the *subjective* guilt" of the enemy. He notes that this requirement greatly restricts the number of cases in which war is justifiable ("Noncombatant Immunity," pp. 121-124, 156-157). The evidence cited above supports the viewpoint of Vanderpol, Stratmann, de Solages, Tooke, and Hartigan. In my opinion, Thomas used the technical term *culpa* precisely to emphasize the subjective intention of the enemy.

[168] ST, I-II, 105, 2, obj. 11 (author's translation); cf. I-II, 87, 7.

[169] *Summa contra Gentiles*, III, 10 (Leonine ed., XIV, 26; author's translation). Thomas' view seems to have been that each intentional misdeed carried with it a certain amount of *culpa* which had to be compensated for by an equal amount of *poena*. Or, in alternative language, an intentional misdeed was a culpable deed because it lacked order to the proper end; *poena* re-ordered the *culpa* (*Summa contra Gentiles*, III, 139-146).

[170] See n. 164 above.

indicates that the term "attack" in the formula fills the place of "penalty" in the quotation. Thus Thomas' formula for a just cause might be reformulated in the following terms:

> Those upon whom war is made merit the penalty of warfare because of some intentional and avoidable misdeed.

It is therefore clear that Thomas' just-cause formula was couched in the language of punishment, although he carefully avoided the term "punishment" as he had in his discussion of authority.[171] As if to emphasize the punitive character of war for a just cause, Thomas appended to his just-cause formula the following quotation from Augustine:

> Just wars are usually defined as those which avenge wrongs (iniuriae), when a people or a nation (civitas) is to be punished. . . .[172]

In addition to analyzing the enemy's offense in terms of guilt and punishment, Thomas described the wrongdoing of the other side in the language of justice, utilizing a word just encountered in Augustine: iniuria.[173] On one occasion he referred to "wrongs or injustices (iniuriae) done to other persons" as a proper cause of war.[174] Within the ex professo treatment of war Thomas commented that

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[171] See n. 60 above.

[172] Augustine, Quaestionum in Heptateuchum, VI, 10; ST, II-II, 40, 1 (author's translation). Thomas seems to have derived this quotation from Gratian, Decretum, Pt. II, C. 23, qu. 2, c. 2.

[173] The term iniuria can be translated as "injury," as "wrong," or as "injustice." In Thomas, it seems to have included the connotation that the order of justice or right (ius) was violated (Roy J. Deferrari, A Latin-English Dictionary of St. Thomas Aquinas [Boston: St. Paul Editions, 1960], p. 528).

> Wars are lawful and just . . . insofar as they defend the poor and the whole commonwealth from the injustices (iniuriis) of the enemy.[175]

If Thomas' references to culpa emphasized the subjective element of just cause, his mention of iniuriae indicated that the order of justice had to be violated before one was justified in going to war.[176]

When he shifted his focus from the offense of the enemy to the need or benefit of one's own side, Thomas formulated the positive cause of just war in a variety of similar phrases. Just causes for war included:

1. "Defending the commonwealth from external enemies."
2. "The salvation of the fatherland."
3. "Conserving the temporal peace of the commonwealth."
4. "The assistance of neighbors, not only as regards the defense of private persons but also as regards the defense of the whole commonwealth."
5. "Defense of the poor and oppressed."[177]

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[174] ST, II-II, 188, 3, ad 1 (author's translation). See n. 161 above.

[175] ST, II-II, 40, 2, obj. 1 (author's translation).

[176] It seems therefore that for Thomas culpa, or moral guilt, was a necessary but not a sufficient condition for a just cause. This position would be congruent with his argument that human law did not aim to repress all vices but rather "chiefly those which are harmful to others," i.e., vices which were opposed to the order of justice (ST, I-II, 96, 2).

[177] The sources of these direct quotations are: (1) ST, II-II, 40, 1; (2) II-II, 40, 2, obj. 4; (3) II-II, 123, 5, obj. 3; (4) II-II, 188, 3; (5) ibid. (author's translations). Similar phrases can be found in CS, IV, d. 16, qu. 4, art. 1, qu^{a} 3; ST, II-II, 42, 2, ad 1; On the Government of Jews (Dawson trans., p. 93). Note that these positive formulations were phrased in utilitarian rather than retributive language.

In Thomas' view, the good of the whole commonwealth was the particular concern of justice, specifically, of legal justice.[178] Thus, once again in his positive formulation of just cause he related his thought about war to his conception of justice.

The above negative and positive formulations of just cause remained in the realm of generality. If we ask for a precise list of specific offenses, we shall be disappointed. From Augustine Thomas cited two venerable offenses: failure of a government to "punish what has been done wickedly by its own [citizens]" or to "give back what was unjustly carried away."[179] Commenting on Deuteronomy 20, Thomas seemed to regard rejection of a peace offer as a just cause for war.[180] He also spoke of a hostile invasion in terms that indicated his approval of national self-defense.[181]

The above analysis has examined virtually all of Thomas' explicit statements concerning the just cause of political war. In the paragraphs which follow several characteristics and implications of his just-cause conception will be briefly noted.

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[178] ST, II-II, 58, 5-7.

[179] Augustine, Quaestionum in Heptateuchum, VI, 10; ST, II-II, 40, 1; cited from Gratian, Decretum, Pt. II, C. 23, qu. 2, c. 2.

[180] ST, I-II, 105, 3.

[181] On Kingship, I, 1 and I, 15 (Phelan trans., pp. 9-10, 67); On the Government of Jews (Dawson trans., p. 93). It is perhaps significant that although Thomas borrowed liberally from Aristotle, he passed over in silence one of the causes for war which Aristotle had accepted as legitimate, namely, the enslavement of men who naturally deserve to be slaves (Politics, VII, 14). On this point see Gmür, Thomas von Aquino, p. 70.

Thomas was not primarily interested in discussing the question of offensive versus defensive war. His main concern was to stipulate that a deliberate offense by the other side must precede the launching of a just war. While such wars were always "defensive" in the sense that they were a response to deliberate injustice, they were sometimes "offensive" in the sense that the misdeed of the enemy was the seizure of property rather than actual invasion.[182]

Thomas' requirement of subjective guilt in the enemy ran counter to the concept of collective guilt. The strong emphasis on culpa tended to focus attention on the will, which was, by definition, an individual matter.[183]

By implication Thomas' theory of personal responsibility for both knowledge and action opened the door to conscientious objection to participation in warfare. If his view of political authority implied that the subject should normally obey his prince, his doctrine of just cause introduced the possibility of disobedience. This possibility was exemplified in the treatise on justice, where Thomas explicitly urged subordinates to disobey superiors who commanded unjust action.[184]

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[182] If Thomas accorded the right of self-defense to private individuals (ST, II-II, 64, 7), we may be sure that he accorded the same right to political communities, which protected the common good. Regout argues that Thomas' discussion of just war referred exclusively to "the war in which one himself takes the initiative" (La doctrine, p. 81). My thesis takes a slightly different tack, arguing that Thomas discussed war primarily in moral terms rather than in terms of attack and defense. For two analogous cases in which Thomas depicted "offensive" action as a "defense" against deliberate injustice, see ST, II-II, 41, 1 ad 3 (police action) and II-II, 69, 4 (resistance by a man unjustly condemned to death).

[183] In the following section, the discussion of the how of just war, we shall note that, according to Thomas, no human being could lawfully be killed unless he had personally committed a culpable offense (ST, II-II, 64, 6; 108, 4, ad 2). Thus in the final analysis the term "just cause" applied to individuals and

Finally, Thomas' dual focus in the discussion of just cause illustrated him concern to balance retribution and utility. His statements about the offense of the enemy generally implied a retributive view of punishment, while his statements about the need or benefit of one's own side were utilitarian in character. On the one hand, Thomas qualified retribution by introducing utilitarian considerations; in other words, he was concerned with the problem of proportionality. Implicit in his theory of just cause was the idea that the cause had to be sufficiently grave to merit punishment--particularly when the punishment involved the application of lethal force.[185] In

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their voluntary actions. For a thorough discussion of Thomas and the problem of collective guilt see Eschmann, "Studies: I" and "Studies: II."

[184] ST, II-II, 105, 3, ad 3; 64, 6, ad 3; cf. I-II, 96, 4. For Thomas' general theory of conscience see n. 166 above and ST, I-II, 19, 5 and 6. In the preceding section we noted that a prince's offense against the divine law sometimes released a subject from his political obligations (see n. 74 above). In this case a prince's offense against justice, that is, against a natural virtue, provided sufficient warrant for conscientious objection.

[185] In discussing the analogous problem of judment Thomas urged that doubts about other persons be interpreted for the best. He specifically prohibited judging another person "on the basis of slight indications" or "on the basis of trivial signs." Rather, he required that a judgment of other persons be based on a compelling cause," "a sufficient cause," and "manifest indications of malice" (ST, II-II, 60, 3 and 4). For Thomas' particular concern with the use of lethal force see ST, II-II, 108, 3, ad 2; 108, 4 ad 2.

addition, he argued that even a punishable offense should be overlooked if punishing the offender would cause more harm than the offense itself.[186] On the other hand, Thomas' retributive view of punishment qualified his utilitarianism. He required culpable action as a pre-requisite of the just cause. In theory at least, such a requirement prevented the common good from becoming an end to be sought by any means.[187]

Suitable cause of religious war

If Thomas regarded a just cause as one of the pre-requisites of just war, he also required a proper cause for religious war. In his fullest discussion of crusade-indulgences he indicated the necessity of a "suitable cause" (*causa conveniens*).[188] A similar phrase occurred in the early *Commentary on the Sentences*. Speaking about the dispensation of indulgences in general, Thomas named a "legitimate cause" (*causa* . . .

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[186] ST, II-II, 108, 1, ad 5; cf. II-II, 43, 7 and 8. Concern for proportionality in this sense was later to be called a "reasonable hope of success."

[187] For a modern restatement of a similar position see H. L. A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* (Oxford: Clarendon Press, 1968), pp. 20-22, 77-80. Hart distinguishes two principles of punishment, the one utilitarian, the other deontological:

> "The utilitarian principle which justifies punishment by its propensity to protect society from harm, and a principle of justice which requires us to confine punishment to those who have broken the law and had at least some minimum capacity to comply with it" (p. 78).

[188] *Quodlibetum* II, 16 (Parma ed., IX, 484).

legitima) as one of the requirements.[189] Alternatively, the requisite cause for an indulgence was designated as "the reason (*ratio*) for dispensing the treasury [of the saints]."[190]

As the following analysis demonstrates, the "suitable causes" specified by Thomas in his major discussion of crusade-indulgences were indistinguishable from the causes mentioned in his general remarks on religious war.[191] Because of this basic similarity the two types of causes are treated together. For the sake of simplicity the phrase "suitable cause" is applied to both types, even though Thomas did not consistently employ any single terminology in his description of either type.

As he had done in his discussion of just cause, Thomas formulated the suitable cause both negatively and positively. In general terms he identified the offense of the enemy as "injustices or wrongs (*iniuriae*) done to God."[192] Similarly, he noted that crusade-indulgences were granted for "the repression of the Church's enemies, who disturb her peace."[193] In his justification of military religious orders Thomas argued that their establishment had been necessary "for resisting unbelievers in certain lands."[194]

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[189] CS, IV, d. 20, qu. 1, art. 4, qu^{a} 3 (Parma ed., VII/2, 846) [=ST, *Supplementum*, 26, 3].

[190] CS, IV, d. 20, qu. 1, art. 3, qu^{a} 2 (Parma ed., VII/2, 844; author's translation) [=ST, *Supplementum*, 25, 2].

[191] A crusade in the technical sense required official papal authorization, crusade-preaching, and crusade-indulgences. Thus while all crusades were--at least ostensibly--religious wars, not all religious wars were necessarily crusades. See n. 145 above.

[192] Pseudo-Chrysostom, *Opus Imperfectum*; cited in ST, II-II, 188, 3, ad 1; 108, 1, ad 2.

[193] CS, IV, d. 20, qu. 1, art. 3, qu^{a} 3 (author's translation) [=ST, *Supplementum*, 25, 3].

Thomas' most comprehensive positive formulation of the suitable cause occurred in his major discussion of crusade-indulgences. There he defined a "suitable cause" (causa conveniens) as

> a cause pertaining to the honor of God, or to the necessity or utility of the Church.[195]

In other contexts Thomas indicated his approval of religious wars fought for the following positive causes:

1. "For the conservation of the divine worship."
2. "Because of service to God."
3. "For the utility of the Church."
4. "For the truth of the faith."
5. "For the defense of Christians."
6. "For the defense of the commonwealth of the faithful."[196]

Whereas he had mentioned only a few examples of just cause, Thomas enumerated several specific suitable causes for religious war. On at least four occasions Thomas spoke of wars fought for "the support of the Holy Land" (in subsidium Terrae Sanctae). In one case he explicitly identified such support as a "suitable cause" for a crusade-indulgence.[197]

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[194] ST, II-II, 188, 4, ad 5.

[195] See n. 160 above.

[196] The sources of these direct quotations are: (1) ST, II-II, 188, 3; (2) II-II, 188, 3, ad 2; (3) CS, IV, d. 16, qu. 4, art. 2, qu^{a} 3; (4) ST, II-II, 40, 2, obj. 4; (5) ibid.; (6) ST, II-II, 40, 4 (author's translation). Causes 4 and 5 were cited from Gratian's Decretum, but Thomas did not question their validity.

Another specific cause was embedded in Thomas' treatise on faith. In the course of discussing the relations between Christians and unbelievers he referred to the wars which Christians sometimes fought with "pagans and Jews."

> The faithful of Christ frequently wage war against unbelievers, not indeed in order to force them to believe--because, even if they conquered them and held them as captives, they would leave it to their liberty whether they wish to believe--but rather to compel them not to hinder (impediant) the faith of Christ.[198]

Thomas indicated precisely what actions on the part of unbelievers constituted such hindrance:

> [Unbelievers] are to be compelled by the faithful--if the capacity to do so exists--not to hinder the faith, either by blasphemies, or by evil persuasions, or even by open persecutions.[199]

Though somewhat imprecise, Thomas' terminology seemed to refer to deliberate action taken by pagans against Christians.[200]

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[197] ST, 188, 3, ad 3; 189, 3; Quodlibetum II, 16; CS, IV, d. 32, qu. 1, art. 4, obj. 1. The phrase subsidium Terrae Sanctae seems to have been a technical thirteenth-century formula for the Crusade in the Near East. See Villey, La croisade, pp. 233-235.

[198] ST, II-II, 10, 8 (author's translation).

[199] Ibid. (author's translation).

[200] The problem of interpretation is whether the mere existence of a strong infidel state or the mere practice of pagan rites by such states constituted a threat to Christians. Gmur cites Thomas' intolerance of (domestic) pagan rites (ST, II-II, 10, 11) and argues that the question must remain open (Thomas von Aquino, p. 24, n. 3). However, I am inclined to think that Thomas sought to contrast the mere unbelief of pagans, including observance of their rites, with direct action against Christians. In his view, only the latter action constituted a suitable cause for war.

Such action constituted, in his view, a suitable cause for religious war.

Without specifically mentioning the word "war," Thomas discussed another kind of encounter between Christians and unbelievers: the situation in which pagans exercised authority, including political authority, over Christians.[201] He argued rather vigorously that pagans should "by no means" be allowed to gain new authority over Christians. As for cases where pagans already ruled Christians, he noted that the Church sometimes allowed pagan rule to continue but sometimes abolished it.[202] In language strongly reminiscent of his ex professo treatment of war, Thomas explained why the Church could abolish pagan authority in the latter case.

> Such a right of dominion can justly be abolished by the sentence or decree of the Church, which has the authority of God. For unbelievers by virtue of their unbelief merit the loss of their power over the faithful, who are converted into sons of God.[203]

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[201] ST, II-II, 10, 10. That political authority was one type of authority under discussion in this article is indicated by the following considerations: (1) Thomas' terms in this article (praelatio and dominium) were the same as those used in his extended treatment of political authority in CS, II, d. 44, qu. 1, esp. art. 3; (2) in the text Thomas referred to the authority of the judge, which was one example of political authority.

[202] ST, II-II, 10, 10. One can envision two examples of the latter possibility. Christian minorities might have existed in countries that had been ruled for centuries by pagans. Or the subjects of a pagan prince might have been converted, while he himself remained an unbeliever.

[203] ST, II-II, 10, 10 (author's translation and italics). Thomas' deep respect for the custom of the Church was indicated above, n. 88.

Implicit in Thomas' discussion, therefore, was an acceptance of two additional suitable causes of religious war: the extension of pagan authority over Christians; and the exercise of such authority in certain cases.

In addition to being threatened by paganism from without, the Christian faith was in Thomas' view menaced by heresy from within.[204] As he had in the case of unbelievers in general, Thomas argued that heretics should be prevented from hindering the Christian faith. In the Commentary on the Sentences he insisted that such "prevention of hindrance" differed from compulsion to believe:

> The Church does not pursue them [heretics] in order to induce them by violence to believe but in order that they may not corrupt others and that so great a sin may not remain unavenged.[205]

However, similar remarks in the Summa theologiae seemed to reflect a somewhat harder line:

> There are unbelievers who at one time accepted the faith and professed it, for example, heretics and apostates. Such persons are to be submitted even to bodily compulsion, so that they may fulfill what they have promised and hold what they once received.[206]

It is true that in the case of heretics Thomas did not explicitly envisage the need for war. Instead, he noted that the Church delivered persistent heretics "to the secular court to be exterminated from the world by death."[207] However, Thomas' acceptance of the death penalty for recalcitrant heretics and the close analogies between his discussions of heresy and general unbelief indicate that, in principle at least, he would have considered persistence in heresy a suitable cause for religious war.

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[204] Thomas was more stringent with heretics than with unbelievers in general. The former were to be coerced merely because of their heresy. See ST, II-II, 10, 8, and n. 200 above.

[205] CS, IV, d. 13, qu. 2, art. 3, and 5 (Parma ed., VII/2, 679; author's translation).

[206] ST, II-II, 10, 8 (author's translation).

Parallel to the problem of heresy was the sin of schism. While he did not explicitly envisage the application of the death penalty to schismatics, Thomas did note the Church's custom of calling on secular political authorities for aid in controlling such enemies of Church unity:

> The Church, when certain persons are not sufficiently restrained by excommunication, employs the coercion of the secular arm (coercionem brachii saecularis).[208]

Whether the coercive measures of secular authority ever took the form of military action was left unexplained. At the very least the employment of military means would not have been incompatible with Thomas' remarks on the coercion of schismatics. It can therefore be argued that Thomas probably would have regarded serious difficulty with schismatics as a suitable cause for religious war.

Although Thomas did not explicitly discuss the theoretical relationship of political and religious wars, certain general inferences can be drawn from the above analysis of just and suitable causes for war. First, there is evidence in Thomas' enumeration of general causes that he viewed political and religious wars as parallel phenomena. Almost-identical phrases were employed at the natural and supernatural levels of discussion:

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[207] ST, II-II, 11, 3 (author's translation); cf. II-II, 11, 4.

[208] ST, II-II, 39, 4, ad 3 (author's translation).

Just Cause	Suitable Cause
"The utility of the commonwealth."	"The utility of the Church."
"Wrongs done to other persons."	"Wrongs done to God."
"Defending the commonwealth from external enemies."	"The defense of the commonwealth of the faithful."[209]

Thus we conclude that for Thomas there was an analogical relationship between political and religious causes for war.

The striking similarities in Thomas' enumeration of just and suitable causes cast a possible new light on his definitive general formulation of just cause:

> A just cause is required, namely, that those who are attacked merit the attack because of some fault (propter aliquam culpam).[210]

What is surprising in retrospect is the elasticity of Thomas' formula: its language was sufficiently abstract to allow for a variety of possible applications. Specifically, Thomas' just-cause definition was general enough to cover any of the negatively-formulated suitable causes treated in this section. "Disturbing the peace of the Church," "persecuting Christians," "heresy," and "schism" were all deliberate offenses, to which the term culpa might very appropriately have been applied. It is thus possible that Thomas conceived of the suitable cause for religious war as a sub-category of a more comprehensive category: the just cause of just war.

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[209] See above, nn. 162, 174, 192, 177, 196.

[210] ST, II-II, 40, 1 (author's translation).

Perhaps it is idle to speculate whether Thomas considered justifiable religious war to be a species of the genus just war. The difficulty is more one of semantics than of substance; in the absence of explicit evidence in Thomas' writings it must probably remain unresolved. What is crystal clear, however, is that Thomas Aquinas described justifiable political wars and justifiable religious wars in precisely analogous terms.

Relation to Background

Socio-political context

As noted above, there were no major political wars in Europe during Thomas' lifetime. The few purely secular disputes in southern France and northern Italy were relatively minor skirmishes in comparison with the religious wars of the period.[211] Thus Thomas' discussion of just cause--insofar as it applied to wars fought for secular reasons--was primarily a theoretical construct.

For its part, the Church was eager not to allow wars between Christian princes to be treated as purely secular affairs. In a variety of ways ecclesiastical jurisdiction was extended to encompass questions of justice. At the beginning of the century

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[211] See Chap. I, n. 13.

Pope Innocent III had affirmed the Church's authority to determine whether one Christian prince had committed a mortal sin against another. Included on the list of such offenses were sins against peace and the breaking of a peace treaty which had been confirmed by an oath.[212]

In yet another respect the thirteenth-century Church experienced the afterglow of Innocent's vigorous policies. Intervening in a French-English dispute, the powerful papal monarch had asserted the Church's right to determine the justice of a war between Christian princes. According to Innocent, the unjust warrior was bound to restore all land and booty seized during the war. If he refused to make restitution, he was subject to excommunication and his land was liable to being placed under the interdict. When Innocent's decree became a part of the canon law, canonists claimed for ecclesiastical courts the same authority to adjudicate the justice of particular wars.[213] Thomas seems to have presupposed the efficient working of such an institutional framework. In discussing the right to seize booty in war, he casually noted:

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[212] The original occasion of Innocent's claim was a dispute between Richard, King of England, and Philip Augustus of France (R. F. Wright, Medieval Internationalism: The Contribution of the Medieval Church to International Law and Peace [London: Williams & Norgate Ltd, 1930], pp. 29, 36). Innocent's pronouncement was later included in the Decretals of Gregory IX, II, 1, 13 (relevant sections translated by Tierney, Crisis, p. 135). For the employment of this chapter by the Decretalists see Russell, "Medieval Theories," pp. 304-307.

[213] Pope Innocent III, Decretals of Gregory IX, II, 24, 29 (Friedberg ed., II, cols. 371-372); Hostiensis, Commentaria, on this passage; Russell, "Medieval Theories," pp. 306; 354-355, n. 129. During the Fourth Crusade Innocent III did in fact excommunicate crusaders for an unauthorized attack on Zara. In a letter of 1203 he agreed to absolve the crusaders on condition that they restore what they had taken illegally and commit no more such offenses (Edgar H. McNeal and Robert Lee Wolff, "The Fourth Crusade," in Wolff and Hazard, eds., The Later Crusades, p. 175).

> If those who take booty are waging an unjust war (habeant bellum iniustum) they commit robbery and are bound to restitution.[214]

In the event that these penultimate measures were ineffective in curbing secular princes, the Church arranged for the application of military sanctions.[215] Again in the employment of this ultimate weapon the Church severely limited the realm of purely secular matters. Frederick II's policies in northern and southern Italy might have been interpreted as an effort to consolidate political authority in his own peninsular domains--an effort which threatened to isolate the papal monarch and his central-Italian Papal State.[216] Popes Gregory IX and Innocent IV, however, characterized several of Frederick's actions as grave sins, excommunicated him, and ultimately launched a crusade against him. To participants in such Church-sponsored military campaigns the papacy could offer both religious benefits and the prospect of acquiring such temporal blessings as wealth and territory.[217]

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[214] ST, II-II, 66, 8, ad 1 (author's translation). Russell notes that the canonists Innocent IV and Hostiensis drew upon Roman law to formulate further, secular deterrents to unjust warfare. These two lawyers held that a vassal participating in a war lacking a just cause could not seek compensation for his losses in the court of his overlord. In a war fought for a just cause, he could seek such compensation. Such a provision, in theory at least, gave the vassal self-interested reasons for refusing to participate in an unjust war. It also forced the lord to reckon with the possible disobedience of his vassals, if he waged an unjust war ("Medieval Theories," pp. 278-282).

[215] The use of "political crusades" against Christian rulers was an innovation of Pope Gregory IX. In 1240, after years of hesitation, Gregory took the step of proclaiming a crusade against Frederick II (Strayer, "Political Crusades," pp. 350-351).

[216] The modern historian Strayer has interpreted the "real causes" for the conflict in this fashion ("Political Crusades," pp. 350-351).

If purely political wars were rare during Thomas' lifetime, religious wars were a frequent occurrence. Rather clear connections can be drawn between his description of the suitable causes for religious war and various thirteenth-century crusades. Of paramount concern to Thomas was the anti-Moslem struggle. The ancient military successes of Mohammed's juggernaut were etched deeply in his consciousness. In his most explicit discussion of Islam, Thomas accused the Prophet and his followers of employing force to spread their faith--presumably in previously-Christian territories.

> [Mohammed] said that he was sent in the power of his arms, which are signs not lacking even to robbers and tyrants. No wise men, trained in divine and human matters, believed in him from the beginning. Those who believed in him were brutal (bestiales) men wandering in the desert, through whose numbers he forced others to follow his law by the violence of arms.[218]

Thomas' repeated references to wars fought "in support of the Holy Land" revealed his interest in the Crusades to the

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[217] Charles of Anjou, who successfully completed the anti-imperial crusade, was rewarded by being crowned King of Naples (see Chap. I, n. 41).

[218] Summa contra Gentiles, I, 6 (Leonine ed., XIII, 17; author's translation). For evidence that Thomas' description was a typical Christian viewpoint see Daniel, Islam and the West, p. 109.

Near East. When he reported that the Church sometimes did not allow the continuation of existing pagan dominion over Christians, Thomas probably thought primarily of the Holy Land. His formulation of the Church's custom provided *post facto* justification of the first few Crusades as well as a potential basis for future Christian campaigns beyond the current borders of the Crusader States.[219]

In noting the Church's refusal to countenance any extension of pagan dominion over believers, Thomas no doubt recalled the Christians' gradual loss of territory to Islam during the thirteenth century. City by city the Moslems had recaptured the Holy Land; the vestigial Crusader States were constantly threatened with extinction. In the early 1260's Thomas had addressed a treatise to the Cantor of Antioch. As he composed his discussion of infidel dominion about 1271, he was no doubt aware that Antioch had fallen to the unbelievers in 1268 with terrible loss of life.

The contemporary situation in the Near East thus clearly qualified as a suitable cause for religious war. Pagan dominion was, in Thomas' view, being extended.[220] Christians were

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[219] This is a strict construction of Thomas' statements. If Thomas regarded the pre-Islamic era as the base period, then all Moslem conquests in the Near East constituted "new extension of dominion," even though the Moslem dominance had continued for centuries. Accordingly, war versus the infidel overlords would have been mandatory rather than discretionary.

[220] The Moslems, on the other hand, referred to their gradual expulsion of Christians as the *Reconquest* of the Holy Land. Writing about 1275 Ibn Šaddad prayed: "May God aid us in the reconquest [of these great cities]." Court poets pointed

XUM

suffering actual persecution at the hands of unbelievers. Military orders, established in the Holy Land to "resist unbelievers," were obviously failing in their mission. The gradual diminution of the Dominican Province of the Holy Land undoubtedly constituted for Thomas an example of unbelievers' "hindering the faith." It is quite possible that he referred particularly to the beleaguered Crusader States when he quoted the Old Testament injunction:

> Rescue the poor: and deliver the needy out of the hand of the sinner.[221]

Thomas' last journey was undertaken in response to the needs of Near Eastern Christians. He died on the way to the Second Council of Lyons, which was called to plan a new campaign "in support of the Holy Land."

Somewhat less clear was Thomas' attitude toward the anti-Moslem crusade in Spain. His composition of the Summa contra Gentiles as a handbook for Spanish Dominican missionaries to the Moors indicated his interest in the affairs of the Iberian Peninsula. The fact that Thomas was concerned for the evangelization of the Moslems did not necessarily signify his lack of support for the Reconquista: Raymond of Pennaforte, his Dominican

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out to their Mamluk patrons that Safed "was delivered from Christian captivity where it had remained for a long time" and that Tripoli was reconquered after it "had been in the hands [of the Franks] for 180 years" (Emmanuel Sivan, L'Islam et la croisade: idéologie et propaganda dans les reactions musulmanes aux croisades [Paris: Librairie d'Amérique et d'Orient, 1968], pp. 62, 172 [author's translation]).

[221] Psalm 82:4; ST, II-II, 40, 1; 188, 3.

confrere, alternately preached the crusade against, and promoted missionary work among, the unbelievers.

There was a general correspondence between several features of the Spanish situation and Thomas' criteria for justifiable religious war. Moslem warriors periodically staged frontier raids against Christians, seizing booty and slaves.[222] Thomas would no doubt have construed such infidel action as the extension of dominion or the persecution of Christians. On the other hand, colonies of Christians seem to have survived within Spanish territories ruled by the Moslems.[223] Infidel authority over these believers, as well as over Christian captives from earlier battles,[224] probably qualified as long-standing dominion of unbelievers over believers--the abolition of which was always in principle possible for the Church. In addition, Thomas' general approval of military orders might well have included the Spanish orders, which played a major role in "resisting unbelievers" during the Reconquest. Thus we conclude Thomas probably would have regarded the Spanish anti-Moslem crusade as a justifiable religious war.

Although the Prussian crusade was not a reconquest of previously-Christian territory, the general situation in Prussia was otherwise similar to that in Spain. Several infidel actions might well have been categorized as "hindrance of the faith" or "persecution of Christians." A few Christian missionaries were martyred. Crusading Teutonic Knights who were captured in battle were sometimes sacrificed to the gods by victorious Prussian warriors. In addition, unconverted pagans at times employed coercion in their efforts to induce recent converts to renounce the Christian faith.[225] Such coercive measures no doubt constituted both "persecution" and an attempt to "extend dominion" in Thomas' terms. At the same time, however, Thomas would have opposed the crusaders' effort to convert the Prussians by force. In his discussion of unbelief he explicitly rejected forced conversions, arguing that "acceptance of the faith is a matter of the will."[226] Thus despite the general compatibility of Thomas' viewpoint with the Prussian crusade, his position on conversion by force constituted an implicit criticism of certain measures employed against the pagans.

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[222] Charles Verlinden, L'esclavage dans l'Europe médiévale, Vol. I: Peninsule ibérique. France (Brugge, Belgium: "De Tempel," 1955), pp. 202-203. The Moslems might conceivably have regarded such raids as justifiable retaliation for losses suffered during the Reconquest.

[223] Latourette, Expansion, I, 305-306.

[224] Verlinden, L'esclavage, I, 537.

If the crusade in Prussia was a mixed case, the anti-Mongolian crusade would have seemed relatively clear-cut by comparison. In their assault from the East the Mongols had destroyed a flourishing Dominican mission among the Cumans, killing many of the Cumanian converts and about ninety Dominicans.[227] Their conquests, which extended over much of previously-Christian Europe, ultimately threatened Hungary and Germany. It is clear, therefore, that the Mongol invasion entailed both the "persecution" of Christians and the "extension of pagan dominion" over them.

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[225] See Chap. I, nn. 26-27. Roger Bacon would probably have argued that the Christians' brutal treatment of the Prussians helped to explain Prussian counter-violence against Christians (see Chap. I, n. 117).

[226] ST, II-II, 10, 8, ad 3.

The success of the Inquisition precluded the need for wars against heretics after about 1260. In contrast, plans for a crusade against the schismatic Greeks became increasingly important in the last third of the thirteenth century. During Thomas' lifetime there were repeated efforts to achieve union with the Greeks--efforts symbolized by Thomas' research on Greek theology in the early 1260's and by his projected role in negotiations with the Greeks at the Second Council of Lyons. By the late 1270's, however, it became clear that hopes for the cooperation and union of the Greek and Latin churches would not be realized.

In 1281, or seven years after Thomas' death, an anti-Greek crusade was undertaken. Almost point for point the preparation for the campaign paralleled Thomas' discussion of ecclesiastical policy against schismatics. First, the Greek emperor Palaeologus was "excommunicated" for his failure to abide by the agreed-upon church union. Then, since excommunication alone seemed inadequate to "restrain" the emperor, Pope Martin IV "employed the compulsion

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[227] Latourette, *Expansion*, I, 328-329; cf. Chap. I, nn. 29, 30.

XUM

of the secular arm," proclaiming a crusade and supporting Charles of Anjou's military campaign against the schismatic Greeks.[228] The affinities of Thomas' discussion with later papal policy suggest that, had he been alive in 1281, Thomas would have supported the anti-Greek crusade.

Intellectual background

Thomas' intellectual predecessors were unanimous in requiring some justifiable cause or legitimate reason for going to war.[229] In devoting attention to the proper cause of war Thomas thus followed the mainstream of tradition. Almost without exception, Thomas' immediate predecessors included both political and religious causes in their discussions of reasons for war. In many cases they indiscriminately mingled the natural and supernatural levels. For example, the theologian Bonaventura defined the "suitable cause" of war as "the protection of the fatherland, or of the peace, or of the faith."[230]

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[228] Strayer, "Political Crusades," p. 369; cf. ST, II-II, 39, 4, ad 3. Thomas' support of a similar crusade against the heretical Emperor Frederick II was noted above (see n. 126).

[229] See the surveys by Regout (La doctrine) and Russell ("Medieval Theories"). Concern for the cause of war had already been present in Aristotle (Politics, I, 8) and Cicero (De officiis, I, 7). Indeed, it is difficult to conceive of any theory about punishment or war which does not confront the question of when such drastic action is permissible.

[230] Commentary on the Gospel of Luke, III, 14 (Quaracchi ed., VII, 77). Examples of this type could be multiplied. In his causa on war, Gratian indiscriminately mixed canons concerning just war with canons concerning the treatment of heretics. Even the case with which he introduced the causa combined the two problems (Decretum, Pt. II, C. 23).

On the other hand, the canon lawyers gradually developed certain distinctions between political and religious wars. Their increasingly precise definition of just cause and their elaboration of a full-blown crusade-theory tended to emphasize the difference between the two kinds of cause.[231] By discussing political and religious causes for war in analogous fashion Thomas simultaneously highlighted the distinction between, and the similarity of, the two types of cause.

When Thomas' predecessors analyzed just causes for political war, they framed their discussions in either moral or juridical terms. The early canon lawyers and most of the theologians were content to treat just cause in very general ethical categories. Usually they appealed to Augustine for support, often citing his famous statement that "just wars are usually defined as those which avenge wrongs."[232] Among the canon lawyers, however, there was also from the beginning a more juridical approach to the definition of cause. Included in Gratian's Decretum was a text from Isidore of Seville, which distilled

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[231] For the crusade-theory, see n. 145 above.

[232] Russell, "Medieval Theories," chaps. 4 and 5, passim. Gratian cited Augustine's statement at a strategic point in the Decretum (Pt. II, C. 23, qu. 2, c. 2). Thomas probably borrowed Augustine's text from Gratian. Alexander of Hales divided the discussion of just cause into two parts: "just merit" on the part of the enemy; and "just cause" on the part of the "good" for whom one fights (Summa Theologica, Bk. III, Pt. 2, Inq. 3, Tract. 2, Sec. 2, Qu. 1, Tit. 3, Membr. 3, Cap. 1 (Quaracchi ed., IV/2, 685). Thomas' discussion of just cause in both negative and positive terms corresponded closely with Alexander's exposition.

Roman-law thinking about just cause.[233] Most later canonists adopted Isidore's summary as their point of departure, drawing upon Augustine primarily for examples of specific causes. By the time of Thomas they had reached a consensus on three just causes for war: (1) defense of the fatherland (patria) against enemy attack; (2) the recovery of goods seized by the enemy; and (3) denial by the enemy of the right of free passage.[234] Thomas' focus on subjective moral culpability, as well as his relative lack of interest in enumerating specific just causes, was clearly much closer to the moral approach of the theologians and early canon lawyers than to the juridical enterprise of the later canonists.[235]

In their elaboration of the just cause a few canon lawyers began to develop a distinction between defensive war and non-defensive war. Huguccio declared that a war of attack was unjust. According to Hostiensis, the fact that a prince had initiated hostilities was prima facie evidence that he lacked a just cause.[236] However, most of the canonists did not sharply distinguish between defensive and offensive wars.[237] Similarly, Thomas concentrated attention on the prior offense of the enemy rather than on the question of offensive versus defensive war.

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[233] Isidore, Etymologies, XVIII, 1; Gratian, Decretum, Pt. II, C. 23, qu. 2, c. 1.

[234] Gratian, Decretum, Pt. II, C. 23, qu. 2, cc. 1-3; Russell, "Medieval Theories," pp. 207-208, 259, 268.

[235] This pattern is what one might expect, given Thomas' conception of the division of labor between theology and canon law (see Chap. I, n. 149). Cf. Hartigan, "Noncombatant Immunity," pp. 110, 117.

[236] Huguccio, Summa, on the Decretum, C. 23, qu. 2, c. 1; Hostiensis, Commentaria, on the Decretals of Gregory IX, II, 24, 29, paragraph 2; cited by Russell, "Medieval Theories," pp. 207, 306.

Among theologians and canon lawyers there was a general consensus on the question of conscientious objection to war. All seem to have relied on an authoritative statement of Augustine:

> A just man, even if he fights under a sacrilegious king can lawfully fight when the king commands it--as serving the order of peace--if it is certain that what he is commanded to do is not opposed to the precept of God or if it is not certain whether or not it is opposed to the divine precept. Thus the iniquity of the one commanding makes the king guilty, but the order of serving makes the soldier innocent.[238]

Alexander of Hales devoted a separate article to proving that a Christian could indeed obey a sacrilegious prince's command to go to war.[239] In similar fashion, several of the canon lawyers argued that a command of the sovereign was to be obeyed if it was just or if it was doubtful whether it was just or not.[240]

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[237] Regout argues that already in Gratian there was a clear distinction between defensive, non-punitive wars (for repelling the enemy or recovering stolen goods) and offensive, punitive wars (for avenging wrongs) (La doctrine, pp. 62-65). In my view, this distinction was by no means clear. The canonists did allow for defensive, non-punitive action by private citizens in the case of actual attack or actual attempted robbery. But it seems to me that for the canonists even defensive action by the prince was generally associated with vengeance or punishment. On this point see Russell, "Medieval Theories," pp. 261-263.

[238] Contra Faustum, 22, 75; cited by Gratian, Decretum, Pt. II, C. 23, qu. 1, c. 4 (Friedberg ed., I, col. 893; author's translation).

[239] Summa Theologica, Bk. III, Pt, 2, Inq. 3, Tract. 2, Sec. 2, Qu. 1, Tit. 3, Membr. 3, Cap. 2, Art. 1 (Quaracchi ed., IV/2, 686-687).

[240] Kuttner, Kanonistische Schuldlehre, p. 285; Russell, "Medieval Theories," pp. 211-212, 276-278, and 340, n. 61.

XUM

Although he did not spell out an explicit position on the question of conscientious objection to war, Thomas' general position on obedience seems to have paralleled this consensus. In two respects, however, his position was less quietistic than that of Augustine and many medieval theologians and canonists. First, as noted above in the discussion of authority, Thomas was aware that the Church had new and potent weapons for dealing with sacrilegious rulers.[241] Second, he urged civil disobedience not only to commands which contravened the supernatural order but also to those which seriously disrupted the natural order of justice.[242]

In addition to discussing just causes for political wars, twelfth- and thirteenth-century theologians and canonists sought to determine appropriate grounds for religious war. The scattered remarks of the pre-Thomistic theologians hardly qualified as systematic discussion of the issue. During the twelfth century Bernard of Clairvaux had declared that the Near Eastern Moslems must be "kept from infesting or oppressing the faithful," lest "the rod of sinners be upon the lot of the just."[243] In his theoretical justification for the Wendish crusade Bernard came perilously close to advocating forced conversion: as he viewed it, the purpose of the campaign against the pagan Slavs was "to destroy utterly or, at any rate, to convert the nations.[244] The thirteenth-century Franciscan theologian Bonaventura accepted "the protection . . . of the faith"[245] as a proper cause for war, while his Dominican contemporary Albertus Magnus expressed concern for "the liberation of the Holy Land."[246]

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[241] In his discussion of apostate princes Thomas explicitly rejected a statement which sounded very much like Augustine's position (ST, II-II, 12, 2, obj. 1 and ad 1; cf. nn. 72 and 238 above).

[242] ST, II-II, 105, 6, ad 3.

[243] See Chap. I, n. 102.

In general, Thomas' position on religious war was compatible with the remarks of his theological predecessors. His own acceptance of "hindrance to the faith" and "pagan dominion over Christians" as suitable causes for war was reminiscent of Bernard's anti-Moslem declaration. On the other hand, in marked contrast to Bernard's justification for the Wendish campaign, Thomas unambiguously rejected conversion by force.

If pre-Thomistic theologians commented only briefly on suitable causes for religious war, their canonistic contemporaries discussed the issue in highly systematic fashion. Underlying the lawyers' detailed circumstantial analyses of religious war was a general consensus: they were unanimous in the opinion that war against pagans and heretics was justified. However, in the case of war with pagans they disagreed on the precise reasons for military action.

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[244] See Chap. I, n. 103.

[245] See n. 230 above.

[246] See n. 143 above. Another of Thomas' Dominican colleagues, Humbert of Romans, was a passionate advocate of the Crusade to the Holy Land (Throop, Criticism, pp. 147-213).

The early canonists and Hostiensis held that the mere unbelief of pagans, i.e., infidel Moslems, was a suitable cause for waging war against them. According to this extreme view, pagan princes had no right to exercise authority and pagan subjects no claim to the ownership of property. Hostiensis put the case quite simply:

> One kind of war can be called the "Roman war," for example, when it is between the faithful and unbelievers. This war is just.[247]

Later canon lawyers, particularly Huguccio and Innocent IV, denied that mere unbelief constituted a suitable cause for a religious war--according to pagans certain natural rights such as the exercise of political authority and the possession of property.[248]

While rejecting mere unbelief as a ground for war, the more moderate canon lawyers accepted the legitimacy of wars fought against the pagans for other reasons. Innocent IV asserted the *de jure* authority of the Pope over all men, both believers and unbelievers. On the basis of this premise he argued that just as God had punished the men of Sodom for sins against the natural law, so the Pope could punish pagans for offenses against the natural law and Jews for offenses against the moral law.[249]

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[247] *Summa* I, 34; quoted by Regout, *La doctrine*, p. 74 (author's translation); cf. Russell, "Medieval Theories," pp. 217-218.

[248] Russell, "Medieval Theories," pp. 223-226, 315, 318; Tierney, *Crisis*, p. 152. See n. 138 above.

[249] Innocent IV, *Commentaria*, on the *Decretals*, III, 34, 8; cited by Vanderpol, *La doctrine scolastique*, pp. 231-232, and Russell, "Medieval Theories," p. 363, nn. 164, 165.

Innocent gave specific examples of each type of pagan offense. The Pope was justified in taking action against pagans who worshiped idols, "for it is natural to worship one God, the creator of the world."[250] Similarly, the Pope had authority to punish Jews

> if they invent heresies concerning their law. Moved by this reason, Pope Gregory [IX] and Innocent commanded that Jewish books which contained many heresies be burned and that those who followed or taught such heresies be punished.[251]

Although Innocent IV refused to countenance forced conversion, he did insist upon the right of Christian missionaries to preach in pagan territories. In his view the Pope's de jure authority over pagan rulers gave him the right to order pagan princes to receive missionaries. A prince's failure to obey such an order constituted a suitable cause for religious war.

> The Pope can command unbelievers to receive preachers who come to preach the Gospel in the territories which they rule. . . . If the unbelievers prevent them from preaching, they commit a fault. This is why they ought to be punished, as always when they do not obey in a case where the Pope has the right to give them orders. Then they ought to be constrained by the secular arm and war ought to be declared on them by the Pope. . . .[252]

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[250] Commentaria, III, 34, 8; translated from Alfred Vanderpol, Le droit de guerre d'après les théologiens et les canonistes du Moyen Age (Paris: A. Tralin, 1911), p. 162.

[251] Commentaria, III, 34, 8; translated from Russell, "Medieval Theories," p. 363, n. 165. The books in question were the Talmud and the works of Rashi (Solomon Grayzel, The Church and the Jews in the Thirteenth Century [revised ed.; New York: Hermon Press, 1966], pp. 29-33, 240-243, 278-279).

[252] Innocent IV, Commentaria, III, 34, 8; translated from Vanderpol, Le droit, p. 165. This issue was to become very important in later Spanish discussions of missionary work among the Latin-American Indians.

The moderate canon lawyers also discussed pagan acquisition of lands which had formerly belonged to Christians. Concerning Moslem possession of the Holy Land canonist opinion was both passionate and unanimous: the Holy Land was unquestionably Christian territory, and the Moslem conquest of it clearly constituted a suitable cause for religious war.[253] There was also general agreement among the lawyers that pagans did not hold legitimate title to other previously-Christian lands.[254] Despite this agreement on the factual situation the canonists differed in their policy-recommendations. While some argued vigorously for the reconquest of such lands,[255] others seemed content merely to assert the de jure claims of Christendom.[256]

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[253] The views of Huguccio and Innocent IV were representative of the canonist consensus. For Huguccio's views see Russell, "Medieval Theories," pp. 218-220. Innocent IV gave several alternative explanations for the Christian claim to the Holy Land: (1) the land was "consecrated by the nativity, life, and death of Jesus Christ"; (2) the papacy had succeeded to the authority of the Roman Emperor, whose Empire included the Holy Land; (3) the Holy Land was unjustly seized from Christians by the Moslems (Commentaria, III, 34, 8; cited by Russell, "Medieval Theories," pp. 363-364, n. 167).

[254] See the discussion of Christendom's "claustrophia" in Chap. I, n. 16.

[255] Johannes de Deo, Liber Poenitentiarius, ch. VI, 2; cited by Russell, "Medieval Theories," p. 362, n. 162. Ecce vicit leo, cited by Peter Herde, "Christians and Saracens at the Time of the Crusades: Some Comments of Contemporary Medieval Canonists," Studia Gratiana, XII (1967), 366. The theologian Humbert of Romans took a similar position (Throop, Criticism, pp. 149-151, 195).

[256] Raymond of Pennaforte, William of Rennes, and Innocent IV seem to have taken this position (Russell, "Medieval Theories," pp. 316-317, 319).

Canonistic opinion on yet another issue was unanimous. All of the lawyers agreed that direct, active harassment of Christians by unbelievers constituted a suitable cause for war. Two possible forms of such harassment were envisioned. Pagan rulers sometimes molested Christians subject to their jurisdiction. In that event, Innocent IV advocated the abolition of their dominion over believers.[257] At times pagans also expelled Christians from their former settlements within infidel states. This action too constituted a suitable cause for religious war according to the canonists.[258]

Finally, following the tradition of Augustine, the lawyers advocated the physical compulsion of heretics and schismatics. Gratian's Decretum included many texts concerning such religious coercion in the causa on war.[259] The thirteenth-century canonist Hostiensis spoke explicitly of crusades against heretics and crusades against schismatics. In fact, Hostiensis regarded the domestic crusade against schism (crux cismarina) as a more urgent task than the foreign crusade in the Holy Land (crux transmarina).[260] Thus in the view of the canonists heresy and schism were suitable causes for religious war.

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[257] Innocent IV, Commentaria, III, 34, 8; cited by Russell, "Medieval Theories," pp. 319-320; 363-364, n. 167.

[258] A famous canon from Gratian's Decretum was entitled, "We ought not persecute Jews, but Saracens" (Pt. II, C. 23, qu. 8, c. 11; Friedberg ed., I, col. 955). The canon explained that the Saracens "persecute Christians and expel them from their cities and their own settlements"; the Jews, on the other hand, were said to live peacefully with Christians. Later canonists added that Christians ought not attack or molest Moslems who did no harm to them (Herde, "Christians and Saracens," p. 367).

[259] Decretum, Pt. II, C. 23, esp. questions 3-7.

Generally speaking, Thomas' discussion of suitable causes for religious war paralleled the viewpoint of Innocent IV and the moderate canon lawyers. He rejected wars fought merely because of unbelief, arguing that

> It is not within the competence of the Church to punish unbelief in those who have never received the faith.[261]

On the other hand, Thomas approved several causes generally accepted by the moderate canonists: the crusade to the Holy Land; pagan harassment or persecution of Christians; heresy; and schism.[262] Innocent's comments concerning the mistreatment of Christians by pagan rulers helped to explain why, in Thomas' terms, the Church sometimes abolished long-standing infidel dominion over believers.[263]

On three issues discussed by the canon lawyers Thomas' position was unclear. Because he argued in personalistic rather than territorial terms, his attitude toward previously-Christian lands was nowhere precisely defined. Two other causes were explicitly approved by Innocent IV: infidel sins against the natural or moral law and the prevention of missionary-activity by unbelievers. Thomas would certainly have regarded Moslem or Jewish offenses against the natural or moral laws as culpable offenses. A refusal by pagans to allow missionary-work in their midst might conceivably have constituted, in Thomas' view, a "hindrance to the faith."[264] In the absence of more explicit evidence in his writings, however, it is impossible to determine whether or not Thomas would have accepted either of these grounds as a suitable cause for religious war.

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[260] Summa, on the Decretals, III, 34, 19; cited by Russell, "Medieval Theories," p. 366, nn. 180, 181.

[261] ST, II-II, 12, 2.

[262] See nn. 202, 203 above.

[263] See nn. 197, 199, 206, and 208 above.

Relation to Ethical Theory

In his general ethical theory Thomas distinguished three aspects of the moral act: its object, its circumstances, and its end. His discussion of the whether-question focused on the object of the act, while his analysis of the who-question specified several due circumstances of war. In treating the when-question Thomas specified a further circumstance of morally permissible war, namely, the when-circumstance. A comprehensive, general statement of his analysis to this point in terms of his ethical theory might take the following form:

> It is morally right for a layman (circumstance) to wage war (object), provided that the war is declared by the authority of the prince or the Church (circumstance); provided that a just cause or suitable cause is present (circumstance); and provided that other due circumstances are observed and a proper end is intended.

It remained for Thomas to explain the "other due circumstances" and the "proper end" of permissible war.

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[264] In his authoritative sixteenth-century *Commentary* on the *Summa theologiae*, Cardinal Cajetan argued that one of the "hindrances to the faith" referred to by Thomas was "the fact

How

Exposition of Thomas' Thought

In discussing the how-question Thomas employed two modes of moral discourse. At times his central focus was the intention required of participants in war. In other contexts he sought to determine the morality of specific means of warfare.

Intention

Thomas' concern for the attitude or subjective state of combatants was expressed both in his *ex professo* treatment of war and in his major discussion of crusade-indulgences. Having named the authority of the prince and a just cause as two requirements of just war, he added a third: a right intention (*recta intentio*)[265] in those waging war. Similarly, his enumeration of pre-requisites for a crusade-indulgence included--in addition to papal authority and a suitable cause--charity in the would-be crusader as he received the indulgence.[266]

The goals, motives, and purposes of moral agents were of vital interest to Thomas. Following Augustine, he argued that

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that they do not allow the public preaching of the faith in their territories." Cajetan called this refusal, as well as similar pagan offenses "a just cause of war against unbelievers" (*Commentary* on ST, II-II, 10, 8 [Leonine ed., VIII, 90; author's translation]).

[265] ST, II-II, 40, 1.

[266] *Quodlibetum* II, 16 (Parma ed., IX, 484). This requirement was related to Thomas' doctrine of penance, according to which contrition and confession prepared the penitent to do works of satisfaction "out of charity" (CS, IV, d. 17, qu. 2, art. 3, qu^{a} 1; IV, d. 15, qu. 1, art. 3, qu^{ae} 2 and 3; IV, d. 20, qu. 1, art. 3, qu^{a} 2) [=ST, *Supplementum*, 3, 1; 14, 2 and 3; 25, 2].

a complete account of any moral act had to include consideration of why the agent performed the act.[267] Perhaps the most dramatic example of Thomas' concern with the agent's intention was his analysis of almsgiving. While affirming that giving money to the poor was, in itself, a laudable act, he argued that a contributor could act immorally in giving to the poor if he made his gift for a selfish reason, namely, in order to earn praise for himself rather than to help the recipient.[268]

Indeed, it can be argued that Thomas assigned greater importance to the agent's intention than to any other aspect of morality. In his view the ethic of the New Testament was primarily an ethic of motive and intention, rather than a set of rules about external behavior.[269] Thomas also asserted that the ultimate criterion by which God judged the moral agent was the agent's intention.[270]

It is not surprising, therefore, that Thomas explicitly confronted the question of intention in discussing the morality of warfare.

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[267] Augustine, Confessiones, IX, 3; Retractationes, I, 9; Contra Faustum, 22, 74; ST, II-II, 19, 7; 20, 1; II-II, 40, 1.

[268] ST, I-II, 19, 7, ad 2 and 3.

[269] ST, I-II, 108, 2 and 3. In Thomas' view, the only external acts required by the New Testament were the sacraments and the observance of certain obvious moral rules, e.g., concerning stealing. Among modern Roman Catholic moral theologians Bernard Häring has most strongly emphasized this subjective and intentional aspect of Christian ethics (The Law of Christ, trans. by Edwin G. Kaiser [3 vols.; Westminster, Md.: Newman Press, 1961-66], I, 35-53, 99-225).

[270] ST, I-II, 19, 7; II-II, 108, 4.

> It is required that the intention of those fighting be right, by which namely it is intended either that good be promoted or evil avoided. Therefore Augustine says in the book On the Words of the Lord: "Among the true worshippers of God even those wars are not sins which are waged, not because of cupidity or cruelty, but in quest of peace, so that the wicked may be coerced and the good supported."[271]

Thomas identified a perverse intention (prava intentio) as the opposite of a right intention. In unequivocal terms he emphasized the importance of intention for any moral assessment of participation in warfare.

> It can happen that even if the authority declaring the war is legitimate, and even if the cause is just, nevertheless the war is rendered unlawful (illicitum) on account of a perverse intention (propter pravam intentionem). For Augustine says in the book Against Faustus: "The desire to inflict harm, the cruelty of taking vengeance, an unreconciled and implacable spirit, the fever of rebelling, and the lust to dominate, and things like these--these are the things which are justly condemned in wars."[272]

A discussion of robbery provided the occasion for a return to the theme of perverse intention in the waging of war.

> Even those who have a just war can sin in taking booty through cupidity from a perverse intention (ex prava intentione), namely, if they fight chiefly on account of booty and not on account of justice.[273]

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[271] ST, II-II, 40, 1 (author's translation). As noted above, Thomas followed Gratian (Decretum, Pt. II, C. 23, qu. 1, c. 6) in attributing the quotation to Augustine. The source of the quotation is unknown.

[272] ST, II-II, 40, 1 (author's translation). In his book Against Faustus Augustine had emphasized that the real evil of war was not the death of human beings but their malicious attitudes (22, 74 and 78). Thomas might have agreed, but his attitude toward earthly life was somewhat more affirmative than that of Augustine; his attitude toward death was correspondingly less sanguine (ST, II-II, 64, 5, ad 3).

[273] ST, II-II, 66, 8, ad 1 (author's translation).

Thomas called such intentions perverse because they came to rest in some negative or destructive end, namely, inflicting harm on another person or seizing his property.[274] In his view such negative ends could be justified only if they were related by the intention to a more comprehensive, constructive end--like justice or the political common good. He therefore argued that in punishment or warfare one could intend to harm the guilty (negative end) if one's ultimate and overriding intention were thereby to promote justice or the common good (positive end).

> If the intention of the avenger is directed chiefly toward some good, which is obtained by punishing the sinner, then vengeance can be lawful. Examples of such goods are: the amendment of the sinner or at least the restraint of the sinner and calm for others; the conservation of justice; and the honor of God. . . .[275]

The negative end intended might even be the death of the guilty person if his death were "referred" to a comprehensive positive end.

> [It is lawful] for a man to intend to kill another man, if he has public authority and if in intending to kill the man . . ., he refers this act to the public good, as in the case of a soldier fighting the foe or a policeman fighting a robber. However, even these sin, if they are moved by private desire.[276]

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[274] According to Thomas, any person taking pleasure in harming another person was guilty of hatred and thus sinned against charity (ST, II-II, 108, 1).

[275] ST, II-II, 108, 1 (author's translation); cf. II-II, 19, 1.

[276] ST, II-II, 64, 7 (author's translation). Thomas hoped that in most cases the death of the guilty person would not be necessary and that some lesser punishment would have a medicinal value for him. In such cases both the good of the

If, according to Thomas, a right intention could "refer" a seemingly-negative military action to a positive end, it could also "refer" a seemingly-natural phenomenon such as war to a supernatural end.

> Among the faithful carnal wars are to be referred, with respect to their end, to the divine spiritual good. . . .[277]

Indeed, in Thomas' view, the intention of a Christian in waging war determined whether or not he could be called a martyr, if he fell in battle.

> When someone sustains death for the common good not referred to Christ, he does not merit a crown (aureolam); but if this [the common good] is referred to Christ, he will merit a crown and will be a martyr--for example, if he defends the republic against the attack of an enemy which is striving to corrupt the faith of Christ and in such defense sustains death.[278]

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guilty person and the common good could be promoted simultaneously. When there was unavoidable conflict between these two goals, however, Thomas invariably and unhesitatingly gave priority to the common good rather than the private good of the guilty individual (ST, II-II, 40, 1, ad 2; 108, 1; 64, 2; 25, 6, ad 2).

The language of "referring" stemmed ultimately from Augustine, who had employed the term in discussing the varieties of human love.

> "Thus, loving his neighbor as himself, he refers the love of both to that love of God which suffers no stream to be led away from it by which it might be diminished" (On Christian Doctrine, trans. by D. W. Robertson, Jr., Library of Liberal Arts, Vol. LXXX [New York: Liberal Arts Press, 1958], I, 22, 21 [p. 19; my italics]).

[277] ST, II-II, 40, 2, ad 3 (author's translation); cf. Augustine's statement in n. 276 above.

[278] CS, IV, d. 49, qu. 5, art. 3, quª 2, ad 11 (Parma ed., VII/2, 1241; author's translation) [=ST, Supplementum, 96, 6, ad 11]. In the corresponding objection Thomas had referred to someone's dying "for the protection of the republic in a just

What is striking in Thomas' comments on intention is the reappearance of two concept-pairs which had been previously discussed as causes. Related to the moral agent, the negative and positive formulations of cause became negative and positive ends to be intended. Similarly, the natural and supernatural ends of the agent corresponded to just and suitable causes of political and religious war. If Thomas' discussion of cause focused on objective reasons for war, his analysis of intention highlighted the subjective goals of the combatants in waging war.

Implicit in this dual emphasis on subjective and objective factors was the possibility of dissonance between them. The coincidence of a just cause and a perverse intention, or, conversely, or an unjust cause and a right intention was, at least on a theoretical level, conceivable. Did Thomas in fact confront such mixed cases?

Close approximations of the latter combination--unjust cause and right intention--occurred at several points in Thomas' Summa theologiae. In the treatise on justice he explicitly envisioned the possibility that a moral agent might do something unjust through ignorance despite his intention to do what was just. To use Thomas' technical terminology, in such a case the agent committed an injustice materially (materialiter) but not formally (formaliter).[279] A specific example of such a material

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war." Thomas also discussed the question of referring natural ends to the supernatural end in ST, I-II, 19, 7, and II-II, 23, 7. One implication of the passage quoted above is that an observer might not always know on which level a particular war was being fought.

[279] ST, II-II, 59, 2.

injustice was an unintentional lie.

> If anyone says something false while believing it to be true, it is false materially (_materialiter_) but not formally (_formaliter_) because the falseness is beside the intention (_praeter intentionem_) of the speaker.[280]

Ignorance often played a major role in the commission of such material injustices. Thomas frankly acknowledged that some kinds of ignorance were "invincible"--that is, that the agent _could not_ have known what he in fact _did not_ know.[281] Although Thomas did not apply this general analysis to the specific problem of war, we conclude on the basis of his discussion that he would have accepted the following proposition: _bona fide_ errors concerning the cause of war are at least in principle possible.[282]

The opposite mixed case involved the coincidence of a just cause and a perverse intention. Of particular interest in this connection is the question: According to Thomas, did a perverse intention on the part of the combatants vitiate an otherwise-just or otherwise-suitable cause for war? Thomas' answer can be inferred from three passages on war which have already been cited.

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[280] ST, II-II, 110, 1 (author's translation). Within the same article Thomas argued

> "It is more in opposition to truth, considered as a moral virtue, to tell the truth with the intention of telling a falsehood than to tell a falsehood with the intention of telling the truth" (ST, II-II, 110, 1, ad 1).

[281] ST, I-II, 76, 2. In Thomas' view "invincible ignorance" occurred chiefly in dealing with specific, difficult cases. He would not have regarded ignorance of the fundamental principles of the natural law as "invincible." See n. 166 above.

[282] The later just-war theorists Vitoria and Grotius devoted major attention to this possibility. See below, Chap. IV.

In discussing self-defense Thomas argued that a properly-authorized soldier could lawfully kill the foe, if he referred his act to the public good. He added, however, that the soldier sinned, if he killed because of private animosity toward the enemy.[283] Implicitly, Thomas accepted the presence of a just cause: he did not deny that the foe's death was necessary or that his demise contributed to the public good. Nevertheless Thomas imputed moral fault to the successful soldier because of his perverse intention in killing--in other words, because of his sin against charity.

An analogous problem arose in Thomas' discussion of booty, where he distinguished three situations in which soldiers might conceivably seize enemy property. Two of the three cases were clear-cut. In the first case soldiers acted rightly in taking spoils while waging a just war. In the third case soldiers took spoils in an unjust war; according to Thomas, such seizure constituted robbery and the plunderers were bound to restitution. The second case was somewhat more complex: Thomas postulated a situation in which soldiers fighting in a just war--that is, for a just cause--

> sin in taking booty through cupidity from a perverse intention (ex prava intentione), namely, if they

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[283] ST, II-II, 64, 7.

> fight chiefly on account of booty and not on account of justice.[284]

Thomas did not dispute the right of the soldiers in a just war to take spoils; nor did he argue that the soldiers' greed rendered the cause of the war unjust. Rather his point was that, despite the justice of the war itself, the soldiers were morally blameworthy because of their selfish aims in participating in it. Specifically, they were guilty of cupidity, an illicit desire which either diminished or destroyed charity.[285]

In his ex professo discussion of war Thomas related intention to cause in the following terms:

> It can happen that even if the authority declaring war is legitimate, and even if there is a just cause, nevertheless war is rendered unlawful (bellum reddatur illicitum) on account of a perverse intention.[286]

What Thomas scrupulously avoided saying was that a cause or a war became unjust in such a case. Instead, he argued that the combatant's act of warring became unlawful because of his improper motives. Intentions like "the passion for inflicting harm" and the "lust to dominate" were, in Thomas' view, incompatible with moral virtue.[287]

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[284] ST, II-II, 66, 8, ad 1 (author's translation and italics).

[285] ST, II-II, 24, 10, ad 2; cf. I-II, 84, 1. Thomas did not discuss the possibility that such cupidity might "spill over" into the realm of action, thereby causing injustice.

[286] ST, II-II, 40, 1 (author's translation).

[287] Augustine, Contra Faustum, 22, 78; ST, II-II, 40, 1 (author's translation). Two other vices in Augustine's catalog, cruelty (crudelitas) and savagery (feritas), were technical terms

Thus we conclude that for Thomas the presence of a perverse intention in the combatants did not render the cause of a war unjust or unsuitable. Rather, his general position on the coincidence of a proper cause and an improper intention might have been formulated in the following terms:

> Those who wage an otherwise-permissible war with a perverse intention *sin* (subjectively) while participating in a war which has a just or suitable cause (objectively).[288]

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in Thomas' usage. Savagery consisted in punishing another person, not because he had done wrong, but merely because of the pleasure derived from torturing him. Cruelty, on the other hand, was defined as punishing an offender for his fault, but excessively. According to Thomas, the vices of savagery and cruelty were opposed to the virtue of clemency and the gift of piety, respectively (ST, II-II, 159, 2; cf. II-II, 108, 2, ad 3). Thus there was in Thomas' discussion of right intention at least an indirect and implicit recognition that a perverse intention might "spill over" into the realm of action. However, Thomas made no explicit mention of this fact and devoted no systematic attention to its possible implications for the justice of one's cause.

[288] Two analogous cases can perhaps serve to illustrate this point. Almsgiving helps the recipient, even if the giver makes his contribution for selfish motives (see n. 268 above). Similarly, the man who intends to tell a lie but mistakenly tells the truth, *sins* in the process of telling the *truth* (see n. 280 above). Further evidence that the interpretation advanced above is correct can be found in comments of Cardinal Cajetan on the right-intention criterion. According to Cajetan,

> The fact that a wicked intention renders a war morally wrong (*vitiosus*) . . . can be explained as follows: it is like the case of the just punishment of thieves; if justice is exercised because of hatred (*ex odio*), then [the judge] *sins in a just work* because of a perverse intention (*ex prava intentione*) (*Summula Cajetani*, under the word "Bellum"; quoted by Regout, *La doctrine*, p. 24; author's translation and italics).

The right-intention criterion has been the subject of much debate among modern commentators on the just war. In general, the authors who deny the importance of the subjective guilt of the enemy (see n. 167 above) also deny the importance of the belligerent's subjective intention. Thus the lawyers Regout (*La*

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Means[289]

In his few scattered remarks on means Thomas generally did not distinguish just war from religious war. Therefore,

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doctrine, p. 29) and de Solages (*La théologie*, p. 10) relegate the right-intention criterion to the background. Vanderpol (*La doctrine scolastique*, p. 88), Stratmann (*Church and War*, p. 76), and Tooke (*Just War*, pp. 150-157) insist on the importance of the criterion.

In my opinion, proponents of both positions are partially correct. Regout and de Solages are right in arguing that the intention of the combatants does not necessarily affect the justice of the cause or the war. They err in minimizing the moral significance of the intention. On the other hand, Miss Tooke rightly stresses the importance of intention in Thomas' thought. She errs in refusing to distinguish logically between the questions of just cause and right intention.

At the same time, however, it must be conceded that intention plays a part even in the determination of the just cause. As mentioned above (n. 185), Thomas required the judge to be positively inclined toward the persons he judged, ready to believe the best about them (ST, II-II, 60, 2 and 4).

An interesting logical problem arises in cases where soldiers on the side having a just cause fight with a perverse intention. In such a case, there is moral fault (*culpa*) on both sides. One might raise the following questions: Is the side which lacks a just cause justified in waging war to the extent that the other side is morally culpable? Or is the perverse intention of the other side purely an internal matter, to be punished by God alone?

[289] It is perhaps important to note at the outset that Thomas' discussion of the means-end problem differed somewhat in orientation from modern ethical discussions of the same problem. In Thomas the question of means arose within the context of a Christian-Aristotelian theory of ends and a moral psychology which stressed intention. The question of means was wholly subordinate to these more basic questions. In addition, the morality of specific means was often determined by definition.

Modern debates about means and ends are usually carried on between ethical deontologists and utilitarians. The debates are often empirically oriented, and the discussion usually centers on the question of consequences. During the past two centuries the means-end question has been a central controversy in ethics. Two recent discussions of the means-end question are: Anthony Flew, "Ends and Means," *Encyclopedia of Philosophy*, 1967, II, 508-511; and John J. Warren, "End," *New Catholic Encyclopedia*, 1967, V, 335-338.

unless there is explicit evidence to the contrary, we shall assume that his discussion of means was applicable to either type of war.

Thomas laid down two fundamental prohibitions in his discussion of proper means. The first prohibition concerned lying to the enemy or breaking one's promise to him. While conceding that one was not obligated to tell the enemy everything, Thomas expressly forbade lying and promise-breaking in warfare.

> A man can be deceived by what another does or says in two ways. In the first place, he can be deceived when the other person says something false or does not keep a promise. Such actions are always unlawful (illicitum). By this means no one ought to deceive the enemy, for there are "certain laws or rights (iura) and covenants of war, which are to be kept even between enemies," as Ambrose says in the book On the Duties of the Clergy.[290]

Thomas' second fundamental prohibition concerned innocent persons: in categorical terms he proscribed the killing of the innocent.

> It is written in Exodus 23:7: "The innocent and righteous man you shall not kill. . . . The lives of righteous men conserve and promote the common good, for they are the most excellent part of the community. Therefore it is in no way lawful to kill an innocent person.[291]

In addition to being forbidden by the divine law of the

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[290] Ambrose, De officiis, I, 29; ST, II-II, 40, 3 (author's translation). In other contexts Thomas supported the same admonition with statements by Cicero (De officiis, III, 29; ST, II-II, 71, 3, ad 3) and Augustine (Epistola 189 ad Bonifacium; ST, II-II, 40, 3, obj. 2).

[291] ST, II-II, 64, 6, sed contra and answer (author's translation).

Old Testament, the slaughter of innocent persons was, in Thomas' view, prohibited by the natural law. Indeed, Thomas included the killing of innocent persons in a trilogy of absolute natural-law prohibitions: murder, adultery, and theft. He argued that only God himself could make an exception to these absolute prohibitions, as in the case when he had commanded Abraham to slay his innocent son Isaac.[292]

As if to leave no room for misunderstanding, Thomas graphically illustrated his position on the innocent by reference to a parable of Jesus. In Jesus' Parable of the Wheat and Tares, a farmer's wheatfield had been sown with weeds by an enemy. The farmer's servants suggested uprooting the weeds. The farmer objected, however, arguing that the weeds could not be uprooted without destroying the wheat. He commanded his servants to wait until the harvest to separate wheat from weeds.[293]

On at least six separate occasions Thomas applied this parable to the question of killing the innocent.[294] Each time he reached the same conclusion: the guilty could be killed only when they were clearly separable from the innocent.

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[292] ST, I-II, 94, 5, obj. 2 and ad 2; 100, 8, ad 3. Thomas may have derived his trilogy of absolute prohibitions from Aristotle, Nicomachean Ethics, II, 6 (1107a). For a recent discussion of such prohibitions in Thomas' thought see John C. Milhaven, "Moral Absolutes and Thomas Aquinas," in Absolutes in Moral Theology?, ed. by Charles E. Curran (Washington, D.C.: Corpus Books, 1968), pp. 154-185.

[293] Matthew 13:24-30.

[294] ST, II-II, 10, 8, obj. 1 and ad 1; 11, 3, obj. 3 and ad 3; 64, 2, obj. 1 and ad 1; 108, 1, obj. 5; 108, 3, obj. 1 and ad 1; Summa contra Gentiles, III, 146.

> Our Lord commanded them to abstain from destroying the tares in order to spare the wheat, i.e., the good. This occurs when the wicked cannot be killed without the good being killed at the same time--either because the wicked are hidden among the good or because they have many followers, so that they cannot be slain without danger to the good. . . . Therefore the Lord teaches that the wicked should be permitted to live and vengeance reserved until the last judgment rather than that the good be killed together with the wicked. To be sure, when the death of the wicked does not threaten the good but rather provides for their protection and safety, then the wicked may lawfully be killed.[295]

Thomas did not even permit the indirect or unintended killing of innocent persons. In his view it was permissible to kill a malicious aggressor in self-defense if one's primary intention were to save his own life. But a malicious aggressor was precisely not an innocent person.[296]

In certain circumstances Thomas did allow for the application of less drastic penal sanctions to innocent persons. However, in discussing this possibility he once again denied that the innocent could be killed.

> No one . . . ought to be condemned without fault on his part (sine culpa) to a corporal punishment,

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[295] ST, II-II, 64, 2, ad 1 (author's translation). Passages like this one and those listed in n. 294 indicate Thomas' opposition to any theory of collective guilt. On this point see I. T. Eschmann, "Studies: I," pp. 40-42, and "Studies: II," pp. 50-55.

[296] ST, II-II, 64, 7. Later just-war theorists applied Thomas' "law of double effect" to the killing of innocent persons. For a historical survey of this problem see Joseph T. Mangan, "An Historical Analysis of the Principle of Double Effect," Theological Studies, X (1949), 41-61. Paul Ramsey devotes detailed attention to Thomas' position on the question of double effect and to contemporary applications of Thomas' position in War and the Christian Conscience, pp. 39-59.

> like death, mutilation, or flogging. But a person may be sentenced to pay punitive damages, according to human justice, even without any fault on his part, but not without a reason (non sine causa).[297]

Thomas' position on the innocent seems even to have colored his narration of Israel's conquest of Canaan. He noted that in the case of distant cities the Israelites

> killed all the [guilty] men who fought against God's people, whereas the [innocent] women and children were spared.[298]

In contrast, the Israelites indiscriminately slaughtered the men, women, and children of other cities. Thomas ascribed this policy to a direct commission from God.

> The Lord sent the people of Israel as the executor of divine justice to punish their . . . iniquities.[299]

Thus we conclude that Thomas absolutely prohibited the killing of innocent persons as a means of warfare.[300] To account for divine commands to the contrary in the Old Testament, Thomas created a special ethical category. But it is clear that, in Thomas' view, such exceptional divine commands had no normative significance for the thirteenth century.

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[297] ST, II-II, 108, 4, ad 2 (author's translation).

[298] ST, I-II, 105, 3, ad 4 (words in brackets added by the author; author's translation).

[299] ST, I-II, 105, 3, ad 4 (author's translation).

[300] An examination of nn. 291-299 indicates that Thomas did not expressly apply his general position on the slaughter of the innocent to the specific problem of war. Hence the above argument is analogical.

In addition to prohibiting lying, promise-breaking, and the slaughter of innocent persons Thomas devoted attention to several specific questions regarding means. While rehearsing Israel's conquest of Canaan, he noted that the Israelites offered peace terms to the enemy before advancing to attack. Implicit in his account was the recommendation that thirteenth-century warriors make similar peace-offers before commencing hostilities.[301]

Within his general discussion of subterfuge in war[302] Thomas raised a second specific means-question: Is the use of ambushes morally justifiable? At least _prima facie_, the employment of such stratagems contradicted his rigorous position on lying to the enemy. Thomas solved the problem with a neat distinction, arguing that concealing the truth was not lying but rather an act of prudence. Thus he concluded that if a war was just, the use of ambushes in prosecuting it was a morally-permissible means.[303]

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[301] Deuteronomy 20:10; ST, I-II, 105, 3, ad 4. The purpose of Thomas' discussion in question 105 was to show the suitability and continuing relevance of the Old Testament judicial precepts. When Thomas disagreed with Old Testament precepts, for example, on the subject of usury, he made his difference of opinion clear (ST, I-II, 108, 3, ad 2).

[302] For this broad interpretation of ST, II-II, 40, 3, I am indebted to Father Thomas R Heath. In his forthcoming translation of this article in the Blackfriars edition of the _Summa theologiae_ Father Heath renders "_uti insidiis_" into English as "to use subterfuge." The older Dominican translation had interpreted the phrase in the narrower sense of "to lay ambushes."

[303] ST, II-II, 40, 3; 71, 3, ad 3. Thomas also cited Augustine in his discussion, noting that Augustine had argued for the permissibility of ambushes on the basis of God's command to Joshua in Joshua 8:2. In this case Thomas conceded continuing normative significance to the divine command because he could

The intersection of religious duty and military necessity gave rise to a third means-issue: whether fighting on holy days was morally permissible. Thomas found a precedent for the Christian dilemma in the history of Judaism, noting that the Maccabees had faced an analogous problem with respect to the Sabbath. Adapting the Maccabean solution to thirteenth-century Christendom, he argued that if a war were necessary to protect the common good of the faithful, it could be waged even on holy days. To act otherwise, said Thomas, would be to "tempt God."[304]

Another means-question discussed by Thomas was the seizure of booty in warfare. In his view the right to take spoil was contingent not only on an official state of war but also on the justice of one's cause. Thus he regarded the taking of others' property without just cause as robbery, for which the rapacious seizor was bound to make restitution. On the other hand, Thomas argued that in the prosecution of a just war combatants could lawfully keep what they took by violence from the enemy.[305]

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harmonize it with his own position--a position argued entirely on other grounds (ST, II-II, 40, 3, sed contra and answer; cf. nn. 292 and 301 above).

[304] ST, II-II, 40, 4, sed contra and answer. Since holy days were related to the supernatural level of life, Thomas seems to have required some minimal connection with the supernatural level for wars fought on holy days. Thus his stipulation that the common good of the faithful had to be at stake.

[305] ST, II-II, 66, 8, ad 1. It is theoretically possible that Thomas would have accepted the despoiling, though not the killing, of innocent persons. See n. 297 above.

Finally, Thomas seems to have accepted the enslavement of prisoners as a permissible means of warfare. In the Politics Aristotle had argued that the enslavement of captives in war was in a certain respect just because it was according to law. But the Philosopher continued, such enslavement was only just in the full sense of the term if the captives were barbarians, i.e., natural slaves.[306] In commenting on this passage Thomas first reiterated Aristotle's position, then went beyond the Aristotelian text to indicate why he considered the enslavement of captives a useful custom.

> Because it is not just according to nature that the vanquished be enslaved--since the wise often happen to be defeated by the unwise--he [Aristotle] says that this is not justice simply (simpliciter); it is nevertheless for the comfort of human life.
>
> For this practice is useful both to the vanquished and to the victors. It is useful to the vanquished because, on account of this practice, they are preserved by the victors, so that they may at least live as subjects (they are called "slaves" [servi] from "serving" [servando]). And it is also useful to the victors since because of this practice men are incited to fight more bravely; and it is expedient for human affairs that there be some brave fighters for the hindering of a multitude of vices.[307]

Thomas' general position on slavery was congruent with his approval of enslaving prisoners. In his view slavery had been instituted as a punishment for sin; as such it was "contrary to the first intention of nature but not the second."[308] Alternatively, Thomas categorized slavery as an aspect of the *jus gentium*, the provisions of which he generally approved.[309] We therefore conclude that he accepted the enslavement of prisoners as a permissible means of warfare.

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[306] Politics, I, 6, 5 (1255a-1255b).

[307] In libros Politicorum Aristotelis expositio, ed. by Raymundus M. Spiazzi (Turin: Marietti, 1951), I, lectio IVe (p. 24; author's translation).

Although Thomas nowhere systematically discussed the logical relationship between means and cause, his position can be inferred from his comments on specific means and from his treatment of an analogous case. In examining the morality of two means--the employment of ambushes and the seizure of booty--Thomas expressly stipulated that a just cause was a necessary prior condition for the application of the means. Quite probably he would have applied the same rule to the enslavement of prisoners.[310] Similarly, Thomas required that fighting on holy days be limited to occasions when a supernatural good was threatened, that is, to situations where a suitable cause for religious war was present. Thus the cause-question affected the means-question to a significant extent.

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[308] CS, IV, d. 36, qu. 1, art. 1, ad 2 (Parma ed., VII/2, 995; author's translation) [=ST, *Supplementum*, 52, 1].

[309] ST, II-II, 57, obj. 2 and ad 2; cf. I-II, 94, 5; I, 96, 4; and n. 48 above. For a recent secondary treatment of Thomas' attitude toward slavery see David Brion Davis, *The Problem of Slavery in Western Culture* (Ithaca, N. Y.: Cornell University Press, 1966), pp. 94-99.

[310] The seizure of booty and the capture of prisoners were analogous provisions of the Roman Law, as noted below in the discussion of "Intellectual Background."

Did the means-question similarly qualify the cause-question? In other words, would Thomas have argued that the employment of immoral means rendered a just cause unjust? This issue was not raised, either explicitly or implicitly in any of Thomas' comments on war. However, his discussion of an analogous problem in a courtroom context indicates how he might have resolved the issue. In the course of determining "whether a lawyer sins by defending an unjust cause," Thomas observed:

> It seems to be a greater sin if [a lawyer] uses injustice in defending a just cause--for example, by producing false witnesses or alleging false laws--than if he defends an unjust cause. For the former is a sin against the form [of justice], whereas the latter is a sin against the matter.[311]

Thomas' illustration envisioned the coincidence of opposites: just cause and unjust means, unjust cause and presumably-just means. However, there was no indication in his comments that he sought to collapse the distinction between cause and means or to make either category logically dependent on the other. Thus a defendant's cause seemed to remain just even if his lawyer deliberately used illicit means, i.e., lied, in arguing it. By analogy we conclude that, in the case of lying at least, the employment of improper means did not adversely affect the cause of a war. Rather, Thomas would have formulated an instance of lying during a just war in the following terms:

> Participants in a morally-justifiable war sin by intentionally employing means which

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[311] ST, II-II, 71, 3, obj. 3 (author's translation).

they know to be illicit.[312]

If the illicit means employed was slaughtering innocent persons rather than lying to the enemy, the situation became somewhat more complex. In the absence even of analogous evidence in Thomas, an imaginary scenario will be employed as an aid in determining his probable position. Let us suppose that the army of Nation A has wilfully attacked and killed 100 citizens of Nation B without cause or provocation. Let us further postulate, as Thomas required, that the soldiers of Nation A are clearly distinguishable from the innocent citizens of Nations A and B. In this imaginary situation Nation B clearly has a just cause: its army would be fully justified in taking action against the soldiers of Nation A because the latter are guilty of a culpable offense. But let us suppose that the army of Nation B chooses to ignore the army of Nation B, which is clearly identifiable, and retaliates instead by deliberately slaughtering 100 innocent citizens of Nation A.[313]

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[312] Although this analogy seems to be the best available in the Summa theologiae, in two respects it is not entirely satisfactory. The conclusions drawn above were implicit rather than explicit, since Thomas' central concern in the article was not to discuss the relation of cause and means. Second, the analogy involved two persons, the lawyer and his client, rather than one person who originally had a just cause and who later lied in defending that cause. Even in the latter case, however, it might be argued that the original cause--a product of past circumstances--remained unaffected by later developments. Rather, the defendant's act of lying in court was a new, logically-independent offense which gave the court or the judge a just cause to punish him.

The "interesting logical problem" raised above (n. 289) is further complicated when soldiers on the side having a just cause not only have a perverse intention but also act illicitly. In such a case both moral fault (culpa) and overt offense are present on both sides.

Thomas would probably have responded to such a case in the following way. On the one hand, he would have asserted that the original just cause still existed, that is, that the original culpable offense of Nation A's army had not been properly "punished." In this sense, the use of improper means did not affect the cause. On the other hand, Thomas would probably have argued that the slaughter of innocent persons by Nation A's army was also a culpable offense and that because of it the remaining innocent citizens of Nation B also had a just cause. In this sense, the means of killing innocent persons was so serious an offense that it constituted a just cause for war.

To summarize, as nearly as can be determined, Thomas' position on the relation of cause to means included the following three points: (1) the presence of a just or suitable cause was the necessary pre-requisite for the employment of certain means, e.g., the seizure of booty; (2) the use of improper means in war--like a perverse intention--did not in itself vitiate a previously-existent just or suitable cause for war; (3) the employment of highly atrocious means, for example, the slaughter of innocent persons, itself constituted a sufficient cause for war.

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[313] The action of Nation B's army is, of course, implausible, but the example accepts the presuppositions of Thomas' treatment of war: (1) that the guilty must be clearly distinguishable from the guilty before war begins; and (2) that the death of innocent persons is prohibited even as an indirect side-effect of action against the guilty. Later just-war theorists abandoned both requirements. They therefore discussed much more plausible cases in which the guilty could not be curbed or punished without endangering the innocent. Regout discusses Vitoria's position on this question in La doctrine, pp. 171-173.

Relation to Background

Socio-political context

As we have noted, major political wars were infrequent in Thomas' day. To use Thomas' terminology, only in rare cases did thirteenth-century warriors direct their intentions merely toward a political good. In contrast, major crusades were being fought in Europe, Asia Minor, and Africa during the entire span of Thomas' lifetime. The fitting disposition for participants in such campaigns was, in his view, an intention directed toward God or the good of the Church.

Despite church custom to the contrary Thomas argued that soldiers who died in religious wars could be called martyrs, provided that they had intended to advance the divine spiritual good by their participation. His discussion of martyrdom in religious war may well have been related to specific events of the thirteenth century. During King Louis IX's crusade to Egypt, several of his soldiers were taken prisoner by the Moslems. In a famous letter describing the Egyptian Crusade, Louis IX recounted the fate of his soldiers.

> But this is most detestable. After the treaties had been entered into and sworn, . . . [the Moslems] led in selected youg men from among the Christian captives--like sacrificial animals, like sheep. Applying swords to their necks, the Moslems constrained them to apostasize from the Catholic faith and to proclaim the law of the most vicious Mohammed. They succeeded in turning aside from the faith many imbeciles and weak persons, who professed that

> detestable law.
>
> But others, like most powerful athletes, rooted in the faith and with firm intention, persisted most constantly. They could by no means be conquered by the threats or the whips of the enemy. Fighting lawfully, they received the crown of the martyrs, made red with blood. Their blood, as we hold for certain, will cry to God for the Christian people, and they will be our advocates before the highest Judge in the court of the heavens, [explaining] how we acted against the enemies of the faith.[314]

King Louis IX of France penned this poignant letter about 1250. Two years later Thomas was teaching in Paris. This circumstance and his later personal relationship with Louis IX render plausible the assumption that he was acquainted with the letter.[315] As he discussed martyrdom in a religious war, Thomas may well have thought of Louis' fallen crusaders.

But Thomas was even more intimately involved with the question of death in religious war: his own brother Reginald had perished during the crusade against Emperor Frederick II. One of Thomas' early biographers reported that Thomas was deeply concerned with his fallen brother's fate.

> Another time, while praying and desiring to know what had become of his brother the Lord Reginald, a figure appeared to him and showed him an open book in which names were written in gold and blue, those in gold being the names of martyrs; and these, Thomas saw included the name of his brother; for Reginald's

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[314] Letter of Louis IX, "De captione et liberatione sua," in Historiae Francorum scriptores, ed. by André Duchesne (5 vols.; Paris: S. Cramoisy, 1636-1649), V, 431 (author's translation and italics).

[315] Albert Kleber advances this argument in "A Soldier's Death, a Martyrdom?" American Ecclesiastical Review, CXI (1944), 286-287.

> death by order of the tyrant Frederick was counted to him as martyrdom, because he suffered in defence of the Church and bore his torments faithfully.[316]

Thomas' discussion of the means to be used in warfare can also be related to his socio-political context. In the following paragraphs we note the relation of the thirteenth-century background to his treatment of three issues: (1) the killing of innocent persons; (2) taking booty; and (3) the treatment of prisoners of war. Thomas absolutely prohibited the killing of innocent persons. Although he did not explicitly characterize any group as being "innocent" in wartime, we may assume that his term "innocent persons" was roughly coterminous with the category of noncombatant.[317]

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[316] Bernard Gui, Vita S. Thomae Aquinatis, chap. 21; translated in Foster, Life, p. 41; cf. Chap. I, n. 70. According to the Chanson de la croisade contre les Albigeois, some Christians also regarded the fallen crusade-commander Simon de Montfort as a martyr (see Chap. I, n. 136).

[317] Richard Shelly Hartigan argues that in Thomas "there is no indication that unarmed civilians should be considered innocent" ("Noncombatant Immunity: Reflections on Its Origin and Present Status," Review of Politics, XXIX [1967], 213). However, there are substantial and, in my view convincing, arguments against Hartigan's position.

First, as we have noted, Thomas vigorously opposed theories of collective guilt and insisted on the need to discriminate among persons, particularly in cases of life and death (see n. 297 above).

Second, Thomas required the presence of both subjective guilt and a serious overt offense as pre-requisites of a just or suitable cause. These requirements suggest that in most cases the offenders were guilty of some violent action which seriously threatened either society or religion (see nn. 176 and 200 above). Perpetrators of such violent action would usually have been soldiers and would certainly have qualified as combatants. Only in the case of heresy or schism was the cause of war conceivably nonviolent action.

Third, according to Deuteronomy 20:13-14 Israel's soldiers killed enemy males but spared enemy women and children. Thomas

Thirteenth-century military practice made possible a rather clear distinction between combatants and noncombatants. Many battles took place in the open field, far from concentrations of civilian population.[318] Combatants were also clearly identified by the fact that they wore armor. Most offensive weapons of the period--lances, swords, pikes, and various kinds of bows--could without difficulty be used discriminately.[319]

However, the distinction between combatants and noncombatants was not universally respected in thirteenth-century warfare. In particular, soldiers who successfully assaulted cities often committed massive violence against the civilian inhabitants of those cities. Several examples may serve to illustrate this lack of discrimination in contemporary warfare. A Moslem narrator of the Spanish crusade complained of Christian atrocities against noncombatants.

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added the explanatory note that the enemy males had "fought against God's people" (ST, I-II, 105, 3, ad 4). He seems to have accepted the continuing normative significance of the Deuteronomic passage and thus to have distinguished the treatment of combatants and noncombatants (see nn. 298 and 301 above).

Fourth, as we shall see, the contemporary canon law exempted certain classes of persons (e.g., pilgrims, women, and peasants) from harm in warfare. It is true that Thomas did not cite these specific exemptions. But in my view this silence means only that he sought to formulate the general moral principle which underlay the exemption of such groups from harm. In general, Thomas was willing to leave casuistry to the canonists (see Chap. I, n. 149).

[318] For example, the Battles of Bouvines (1214), Cortenuova (1247), Benevento (1266), and Tagliacozzo (1268) (Oman, Art of War, I, pp. 476-489, 494-496, 498-505, and 508-514). Examples could be multiplied from the Prussian crusade, the Near Eastern Crusades, and Louis IX's Egyptian Crusade.

[319] See Chap. I, nn. 55-59.

> The entrance of his [King Ferdinand's] troops into Medina Balma was marked by circumstances of unusual cruelty, since they did not even spare the old men past bearing arms, nor refrain from shedding the innocent blood of the women and children: at a word, they put the inhabitants to death without distinction of sex or age.[320]

During the crusade against the Albigensian heresy orthodox Christians laid siege to the Albigensian stronghold of Béziers. Just before their successful assault, the orthodox soldiers asked the papal legate how they might distinguish between orthodox and heretical inhabitants of the town. The legate replied:

> Kill them all; the Lord will know well those who are his.[321]

Obediently the soldiers slaughtered the 8,000 inhabitants of the town, most of whom were noncombatants and many of whom were orthodox Christians.[322]

Sometimes noncombatants fell victim to starvation or disease rather than to the sword. After having besieged the city of Damietta for more than a year, Christian crusaders captured the Egyptian town in 1218.

> All contemporary sources testify that the few thousands of Saracen survivors, men and women, were

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[320] J. A. Condé, History of the Dominion of the Arabs in Spain, trans. by Mrs. Jonathan Foster (3 vols.; London: Henry G. Bohn, 1854-1855), III, 118. The date of the attack was 1232. For other, similar Christian atrocities in Spain see Condé, History, III, 73-74, 80, 140.

[321] J. C. L. Simond de Sismondi, History of the Crusades against the Albigenses in the Thirteenth Century, trans. from the French (London: Wightman and Cramp, 1826), p. 35.

[322] See Chap. I, nn. 33-34.

> more or less ill. Streets and houses were filled with the dead, whose naked bodies had been partially devoured by ravenous dogs. The dead lay unmoved in the beds of the helpless dying. Oliver [a Christian chronicler] says that of the 80,000 people in the city at the beginning of the siege, only 3,000 survived and of these only 100 were not ill.[323]

Moslem civilians also suffered at the hands of the Mongols during the thirteenth century. In 1258 the Mongols sacked Baghdad, the greatest Moslem city of the era.

> Massacres continued throughout the whole city. Those that surrendered quickly and those that fought on were alike slain. Women and children perished with their men. One Mongol found in a side-street forty new-born babies whose mothers were dead. As an act of mercy he slaughtered them, knowing that they could not survive with no one to suckle them. . . . In forty days some eighty thousand citizens of Baghdad were slain.[324]

Asian Christians, delighted by the destruction of Baghdad, proclaimed that the "Second Babylon" had fallen.[325]

But orthodox Christians also suffered indiscriminate violence during Thomas' lifetime. In 1268, or six years before his death, Moslem forces sacked the Christian city of Antioch.

> The horrors of the sack of Antioch shocked even even the Moslem chroniclers. The sultan [Baybars] remembered the crusaders' sack of Jerusalem nearly two centuries before and the recent sack of Baghdad by the Mongol allies of Antioch. He showed no mercy. He closed the city gates that no citizen might escape.

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[323] Oliver, Historia Damiatina, p. 236; entire quotation from Thomas C. Van Cleve, "The Fifth Crusade," in Wolff and Hazard, eds., The Later Crusades, p. 418.

[324] Runciman, History, III, 303.

[325] Ibid., p. 304.

> Anyone found in the streets was slaughtered. Those who cowered in their houses were either slain or made slaves.[326]

Some of these battles and their attendant circumstances were probably unknown to Thomas. However, it is reasonable to assume that he was familiar both with contemporary field warfare and with the storming of cities. Open-field battles between papal and imperial forces repeatedly took place on the soil of the Italian peninsula,[327] often while Thomas was resident there. On the other hand, the tragic circumstances of Antioch's fall were undoubtedly well known to Thomas as well as to all of European Christendom.[328] Pitched battles between armored warriors were clearly compatible with Thomas' demand that guilty and innocent be carefully distinguished in matters of life and death. However, his stringent position on the protection of the innocent was, at least implicitly, a criticism of indiscriminate thirteenth-century military practice. Indeed, it raises the question whether Thomas would have approved of military action against cities under *any* circumstances.

Thomas' comments on the seizure of booty can also be viewed against the backdrop of contemporary social history. Within the system of medieval warfare the capture and division of booty was a central, highly important feature. Indeed, a share of captured enemy property was the chief source of profit for the medieval soldier. Huge wagons followed armies into the field, carefully collecting the spoils of war. At the conclusion of a battle or war the accumulated spoil was ceremoniously divided; elaborate rules determined the portion to be awarded to each military rank.[329] In thirteenth-century Spain, for example, the laws of Castille stipulated that the prince should receive a fifth of the booty. The captain of the army was awarded either a seventh or a tenth of the spoil, according to his standing. Other soldiers shared the remainder of the spoil according to rank, with a mounted knight receiving a somewhat larger share than a foot-soldier.[330]

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[326] Steven Runciman, "The Crusader States, 1243-1291," in Wolff and Hazard, eds., *The Later Crusades*, p. 578. For an account of indiscriminate slaughter by both pagans and Christians during the Prussian crusade, see Johannes Voigt, *Geschichte Preussens*, III (Königsberg: Gebrüder Bornträger, 1828), pp. 84-85, 189-190, 195, 228, 295.

[327] For example, the Battles of Benevento (1266) and Tagliacozzo (1268).

[328] On the role of Pope Gregory X in publicizing the devastation of the Holy Land see Throop, *Criticism*, pp. 12-18.

Similar provisions for dividing spoil seem to have been widespread in the thirteenth century. Before the Latin crusaders attacked the Orthodox capital of Constantinople in 1204, they regulated by treaty the division of the spoil. After the city had been stormed and sacked, the crusade-leader attempted to carry out the treaty provisions.

> When it was over, Boniface of Montferrat ordered all booty brought in for division. Many risked

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[329] Marc Block, Feudal Society, trans. by L. A. Manyon (Chicago: University of Chicago Press, 1961), p. 297; Keen, Laws of War, pp. 146-148.

[330] Keen, Laws of War, pp. 146-147.

> execution in an effort to conceal what they had seized, and much was doubtless concealed. But what was turned in yielded 400,000 marks and 10,000 suits of armor. The humbler knights resented the greed of the leaders, who took all the gold and silk and fine houses for themselves, leaving the poorer men only the plain silver ornaments, such as the pitchers which the Greek ladies of Constantinople had carried with them to the baths. Sacred relics shared the fate of profane wealth.[331]

In principle Thomas accepted the institutionalized booty-system of his day. Had he been able to observe the sack of Constantinople, however, he might well have accused the Latin warriors of "fighting chiefly not for justice but for spoil."[332]

The treatment of war-prisoners varied widely in Thomas' day. Generally speaking, enemy prisoners were treated with particular cruelty when their captors represented a decisively different culture. Thus cultural frontiers were the most frequent setting for atrocious misconduct.

As noted above, victorious thirteenth-century armies sometimes took no prisoners, preferring instead to slaughter enemy combatants and noncombatants alike. In other cases the victors were slightly more discriminate: they killed only captured enemy soldiers. For example, at the Battle on the Durbe River in 1261 fourteen Teutonic Knights fell into the hands of the pagan Prussians and Lithuanians. The prisoners received

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[331] McNeal and Wolff, "Fourth Crusade," p. 185. For similar accounts of the division of spoil by Christians and Moslems see Van Cleve, "Fifth Crusade," p. 419; Runciman, "Crusader States," p. 578; and Runciman, History, III, 162-163.

[332] ST, II-II, 66, 8, ad 1.

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no mercy.

> Eight of them were burned alive in honor of the gods. The others had their arms and legs chopped off; then their bodies were torn to bits with bestial fury.[333]

On occasion the Spanish Christians waged their crusade against the Moors with similar ferocity. Before the Battle of Guadalete in 1234 Christian warriors dispatched their Moslem prisoners.

> The Christians prepared themselves . . . for the battle which they perceived to be inevitable; yet, despairing of success, and not expecting to escape from that place with their lives, they determined first to take a cruel and inhuman vengeance on the prisoners in their hands: the unhappy Moslemah captives were therefore brought in chains before the camp of their victors, who put them all to the edge of the sword without sparing a man.[334]

Large numbers of Louis IX's soldiers suffered a similar fate in Egypt. In 1250 near Damietta the entire crusading army of 15,000 men was captured by the Moslems.[335]

> The Egyptians were at first embarrassed by the numbers of their prisoners. Finding it impossible to guard them all, those that were too feeble to march were executed at once, and on every evening for a week three hundred were taken out and decapitated, by the Sultan's own orders.[336]

Some thirteenth-century prisoners of war received milder treatment: they were enslaved rather than slaughtered.[337] This practice was particularly prevalent on Christian-Moslem frontiers in the Near East and Spain. When Christian crusaders captured the Egyptian town of Damietta in 1219, they sold some of the survivors as slaves.[338] For their part, the Moslem conquerors of Antioch acquired a plentiful supply of Christian slaves.

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[333] Voigt, Geschichte, III, 186-187 (author's translation).

[334] Condé, History, III, 119.

[335] Strayer, "Crusades of Louis IX," p. 494.

[336] Runciman, History, III, 270-271.

> The number of captives was enormous. There was not a soldier in the Sultan's army that did not acquire a slave, and the surplus was such that the price of a boy fell to twelve dirhems and a girl to only five.[339]

In thirteenth-century Spain Christian crusaders continued their southward advance, reconquering Moslem-held territory and enslaving many Moslem captives. The Moslems retaliated with frontier raids in which they seized booty and Christian slaves.[340]

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[337] Three centuries earlier the practice of enslaving prisoners had given rise to the very term "slave" (sclavus, esclave, Sklave, etcetera). During the ninth and tenth centuries German armies, advancing eastward, had captured and enslaved many pagan Slavs. The Slavs came to be so closely associated with slave-status that the new term "slave" was derived from their ethnic name (Charles Verlinden, "L'origen de Sclavus=esclave," Bulletin du Cange: Archivum Latinitatis Medii Aevi, XVII [1942], 97-128).

[338] Runciman, History, III, 162; cf. n. 323 above.

[339] Ibid., pp. 325-326.

[340] Verlinden, L'esclavage, I, 253-254, 548, 549; 202-203. In the Prussian crusade the Church took special pains to prevent the Teutonic Knights from enslaving Christian Prussians. However, the status of Prussians who resisted Christianization or apostasized differed little from that of slaves. See Voigt, Geschichte, III, 228, 315; and Fritz Blanke, "Die Entscheidungsjahre der Preussenmission (1206-1274)," in Heidenmission and Kreuzzugsgedanke in der deutschen Ostpolitik des Mittelalters, ed. by

The most fortunate prisoners of war in the thirteenth century were neither slaughtered nor enslaved. Instead they were held by their captors until they were ransomed or until they could be exchanged for enemy prisoners of war. Perhaps the most famous thirteenth-century instance in which prisoners were ransomed occurred during Louis IX's Egyptian Crusade. After capturing the king's army and slaughtering some of their prisoners, the Egyptians demanded an immense ransom for the surviving Christian captives. By paying one-half of the ransom King Louis IX secured release for himself and a few military leaders. Through patience and diplomacy he arranged the release of the remaining prisoners almost two years later.[341]

It was perhaps in Spain that concern for ransoming captives ran strongest. Many Christian wills of the tenth and eleventh centuries had set aside money for the ransom of Christians held by the Moslems.[342] Conversely, Moslem redemptions of their captive brothers had steadily increased between the ninth and thirteenth centuries.[343] Christian concern ran so high that near the turn of the thirteenth century two religious orders were founded specifically to ransom Christian captives: the

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Helmut Beumann, Wege der Forschung, Vol. VII (Darmstadt: Wissenschaftliche Buchgesellschaft, 1963), pp. 395, 399-400, 407, 414. As we have seen, Roger Bacon accused the Teutonic Knights of reducing the Prussians to slavery (see Chap. I, n. 117).

[341] Strayer, "Crusades of Louis IX," pp. 503-506.

[342] Verlinden, L'esclavage, I, 197-198.

[343] Ibid., pp. 240-241.

Mercedarians and the Trinitarians.

The more important of the two orders was the Mercedarians. Members of this order took a fourth vow in addition to the usual three, namely,

> to act as hostages if necessary to free from the Moors Christian captives whose faith was in danger.[344]

During the first ten years of the order's existence, the Mercedarians are reported to have ransomed 1,647 Christian captives in Valencia and Algiers.[345] The Trinitarians also aided in the systematic ransom of prisoners, especially in the first half of the thirteenth century. Their role was

> to solicit the necessary funds, to carry them to Moslem ports, and to provide released prisoners with spiritual, physical, and moral rehabilitation."[346]

Finally, in some thirteenth-century battles or crusades, where neither side gained a decisive victory, prisoners were exchanged rather than ransomed. Such prisoner-exchanges took place between Christians and Moslems at the conclusion of the Fifth Crusade and during the Christian reconquest of Spain.[347]

Thus, in relation to prevailing thirteenth-century military practice Thomas' position on prisoners of war was relatively moderate. His explicit rejection of killing captives constituted an implicit criticism of certain excesses of his day. Since he was undoubtedly familiar with the Moslem-Christian military encounters at Damietta and Antioch, his position may perhaps be interpreted as a condemnation of Moslem atrocities against Christian captives in both engagements.[348] On the other hand, Thomas' acceptance of enslavement as a relatively humane alternative to extermination reflected the treatment often accorded by both Moslems and Christians to prisoners of other faiths.[349]

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[344] Alfonso Ramirez Morales, "Mercedarians," New Catholic Encyclopedia, 1967, IX, 670.

[345] Verlinden, L'esclavage, I, 537.

[346] Augustine Thomas Walsh, "Trinitarians," New Catholic Encyclopedia, 1967, XIV, 294.

[347] Van Cleve, "Fifth Crusade," p. 428; Verlinden, L'esclavage, I, 241.

Thomas was painfully aware that many Christians had been captured and enslaved by infidel enemies. Unwilling to accept the permanent dominion of unbelievers over such Christian captives, he shared Christendom's concern for their release. In the course of discussing the various kinds of religious life, Thomas noted that some religious orders were directed to "visiting and redeeming captives."[350] He expressly approved the work of such redemptive orders, according them a high place among orders directed to the active life.[351]

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[348] See nn. 314, 315, 326, and 328 above.

[349] See nn. 337-340 above. I have been unable to find any thirteenth-century instance in which Christians enslaved captured Christians. According to Majid Khadduri, Arab prisoners of war were not as a rule enslaved by the Moslems (War and Peace in the Law of Islam [Baltimore: Johns Hopkins Press, 1955], p. 131).

[350] ST, II-II, 188, 1.

[351] ST, II-II, 188, 6; cf. II-II, 32, 4.

Intellectual background

Several of Thomas' intellectual predecessors considered the question of intention in relation to war. Alexander of Hales required a just spirit (iustum affectum) in the person declaring war and a due intention (debita intentio) in the soldier waging war. The Franciscan theologian found authoritative support for these requirements in three passages from Augustine, one of which Thomas employed in his own definition of right intention.[352] Similarly, Raymond of Pennaforte required that persons waging war fight with the proper spirit (animus), namely,

> that war not be made because of hatred or revenge or cupidity but because of piety, justice and obedience.[353]

Since he regarded a proper spirit as one of the five essential pre-requisites of just war, Raymond added that if such a spirit was lacking, "the war is called unjust."[354] Reminiscent of Raymond's position was Thomas' later assertion that a war became "unlawful" (illicitum) if fought with a perverse intention.[355]

It seems probable that both Alexander and Raymond derived their texts on intention from Gratian's Decretum. Indeed, Gratian's causa on war included a veritable gold mine of Augustinian texts concerning the importance of intention in war.[356] In his primary stress on the role of intention in warfare Thomas was thus squarely within the Augustinian tradition.

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[352] Summa Theologica, Bk. III, Pt. 2, Inq. 3, Tract. 2, Sec. 2, Qu. 1, Tit. 3, Membr. 3, Cap. 1 (Quaracchi ed., IV/2, 684-685); ST, II-II, 40, 1.

[353] Summa de poenitentia, II, 5, 17 (Tallini ed., p. 184).

[354] Ibid. (Tallini ed., p. 185). Since Raymond was writing a guidebook for confessors, it may be that he used "unjust" in the general sense of "immoral for the participant." Cf. Hostiensis' statement that "war is unjust when it is waged with a spirit of vengeance" (Summa, on the Decretals, I, 34; cited by Vanderpol, La doctrine scolastique, p. 86).

[355] ST, II-II, 40, 1.

One canon lawyer, Peter of Salins, explicitly discussed the relation of cause to intention.

> Note that a war can be lawful in its cause (licitum ex causa)--because of a complaint against someone who is deserving of being harassed by war--and the same war can be unlawful because of the spirit of the one declaring it (illicitum ex anomo [sic] inferentis), if he makes that war from human cupidity or the lust of dominating or with the intention of committing cruelty and the like. In such a war--just in its cause and unjust because of the spirit of the one declaring it--the just man can fight under his iniquitous prince. . . . But if the war is unjust in its cause the subject is not bound to fight for the master who directs him.[357]

In my view Peter's solution serves to illuminate Thomas' position and to confirm the correctness of the interpretation ventured above.[358] For both Peter and Thomas the questions of cause and intention were logically distinguishable, and perversity of intention did not affect the legitimacy of a war's cause.

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[356] Decretum, Pt. II, C. 23, qu. 1, cc. 2, 3, 4, 5, and 6; qu. 3, c. 1; qu. 5, c. 16. Hartigan notes that Augustine said a great deal about the role of intention in war but very little about the means to be employed.

> "[Augustine] expressed only slight concern for the way in which just war was conducted; the general prescriptions of a prudent and sensitive Christian conscience were deemed sufficient to guarantee that there would be no unnecessary slaughter of the innocent" ("Noncombatant Immunity," pp. 111-112).

Although Thomas devoted some attention to the question of means, his primary emphasis was on the role of the warrior's intention.

[357] Peter of Salins, Lectura, on the Decretum, Pt. II, C. 23, qu. 1, c. 4; quoted by Russell, "Medieval Theories," p. 340, n. 60 (my italics). For similar speculation by Stephen of Tournai see Russell, ibid., pp. 198-199.

The problem of permissible means in warfare was also discussed by Thomas' intellectual predecessors, particularly the canon lawyers. Among the questions receiving attention were the two means fundamentally prohibited by Thomas: lying to, or breaking faith with, the enemy and killing innocent persons.

Augustine's explicit statement that faith was to be kept with the enemy was dutifully followed by Alexander of Hales and by most canon lawyers.[359] However, a few Decretalists expressed a minority view. Alanus asserted that faith should never be given to "those who declare war against the Pope or the Emperor."[360] Peter of Salins went a step further, arguing that one should only keep promises made to the enemy when it was "good and lawful."[361] It is clear that Thomas adhered to the strict Augustinian position.

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[358] See above, nn. 287-288.

[359] Alexander, Summa Theologica, Bk. III, Pt. 2, Inq. 3, Tract. 2, Sec. 2, Qu. 1, Tit. 3, Membr. 3, Cap. 2, Art. 4 (Quaracchi ed., IV/2, 689); Russell, "Medieval Theories," pp. 254-255, n. 178.

[360] Apparatus to Compilatio I, 24, 1; quoted by Russell, "Medieval Theories," p. 342, n. 70.

[361] Lectura, on the Decretum, Pt. II, C. 23, qu. 1, c. 3; quoted by Russell, "Medieval Theories," p. 342, n. 71. In general, Thomas was willing to make similar exceptions to the rule about promise-keeping (see ST, II-II, 110, 3, obj. 5 and ad 5). But he seems categorically to have rejected such exceptions in the case of dealing with an enemy (ST, II-II, 40, 3).

The question of killing innocent persons in war was not discussed in detail by theologians prior to Thomas. Alexander of Hales, however, seems to have individualized the concept of guilt. One of his requirements for a just war was

> just merit . . . in the person against whom war is made, namely, that he justly deserves (meruerit) to be attacked or to suffer persecution.[362]

In the same context Alexander noted that innocent Christians had sometimes suffered persecution. Thomas shared Alexander's awareness that in Christian history innocent persons, especially Jesus and the martyrs, had often been unjustly treated. It is perhaps not unreasonable to conjecture that this consciousness of the past made Thomas sensitive to the problem of innocent suffering.[363]

The canon law was much more specific about the treatment of the innocent in warfare. It included two canons which are often referred to as the Peace of God. The first was a statement by Nicholas II in 1059--a declaration which had been anticipated by a grass-roots peace movement of the tenth and eleventh centuries.[364]

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[362] Summa Theologica, Bk. III, Pt. 2, Inq. 3, Tract. 2, Sec. 2, qu. 1, Tit. 3, Membr. 3, Cap. 1 (Quaracchi ed., IV/2, 685). The canonist Raymond of Pennaforte also required that war be waged only against the guilty (nocentes) (Summa de poenitentia, II, 5, 17 [Tallini ed., p. 184]).

[363] ST, II-II, 64, 6, ad 3; III, 46, 1, 5, 6, and 11; 47, 5 and 6. One function of the "treasury of the saints" was to give institutional expression to this awareness (CS, IV, d. 20, qu. 1, art. 3, qu^{a} 1) [=ST, Supplementum, 25, 1].

[364] Erdmann, Entstehung, pp. 53-56; Hartigan, "Noncombatant Immunity," pp. 196-197.

> Those who shall despoil pilgrims, persons at prayer in a sanctuary, clergy, monks, women, or unarmed poor people, or take their goods, or do some evil to them, shall be placed under the anathema, unless they properly reform.[365]

A similar provision for protecting the innocent was proclaimed 120 years later at the Third Lateran Council by Pope Alexander III.

> We renew [the prescription] that bishops, clergy, monks, lay brothers, strangers, merchants, peasants who come and go and are working at agriculture, and the animals which they use and which carry seed to the field enjoy a complete immunity (securitate).[366]

Although Thomas was acquainted with both of these prescriptions he did not explicitly refer to either of them.[367] However, this silence did not, in my view, signify his disagreement with the intent of the two canonical prescriptions. Rather, Thomas preferred to formulate his position in abstract terms, arguing in general that innocent persons might never be killed instead of enumerating specific categories of protected persons.[368]

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[365] Nicholas II, at the Council of Rome in 1059; Gratian, Decretum, Pt. II, C. 24, qu. 3, c. 25 (Friedberg ed., I, col. 997; author's translation).

[366] Alexander III, at the Third Lateran Council in 1179; Decretals of Gregory IX, I, 34, 2 (Friedberg ed., II. col. 203; author's translation).

[367] The index of the Summa in the Leonine edition indicates that Thomas quoted the canons and chapters immediately surrounding the two formulations of the Peace of God (Leonine ed., XVI, 221). Two modern commentators on Thomas have noted Thomas' failure to refer to the Peace of God: Émile Chénon, "Saint Thomas d'Aquin et la guerre," in L'Église et le droit de guerre (2d ed.; Bloud & Gay, 1920), pp. 102, 106-107; and John Eppstein, The Catholic Tradition of the Law of Nations (Washington, D.C.: Catholic Association for International Peace for the Carnegie Endowment of International Peace, 1935), p. 85.

[368] This interpretation differs from the viewpoint of Hartigan ("Noncombatant Immunity," p. 151) and Otto Schilling, who

In addition to treating these fundamental means-questions, theologians and lawyers prior to Thomas discussed the morality of employing specific means in warfare. On the question of ambushes there seems to have been unanimity of opinion among both theologians and canonists.[369] Augustine's explicit approval of ambushes, cited also by Thomas, carried the day.[370]

The question of fighting on holy days was a problem for Thomas and his predecessors because of the medieval Truce of God. Originally proclaimed by Pope Innocent II at the Council of Clermont in 1130, the Truce of God eventually found its way into the canon law.

> We instruct that truces be observed inviolate by all from Wednesday after sunset until sunrise on Monday, from the Advent of the Lord until the Octaves of Epiphany and from the Septuagesima to the Octaves of Easter.[371]

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argues that in Thomas' view, "der Krieg von Volk zu Volk geführt wird" (Die Staats- und Soziallehre des heiligen Thomas von Aquin [2d ed., revised; Munich: Max Hueber Verlag, 1930], p. 206). In my opinion neither author takes sufficient account of Thomas' rejection of collective guilt.

[369] Alexander of Hales, Summa Theologica, Bk. III, Pt. 2, Inq. 3, Tract. 2, Sec. 2, Qu. 1, Tit. 3, Membr. 3, Cap. 2, Art. 4 (Quaracchi ed., IV/2, 689); Gratian, Decretum, Pt. II, C. 23, qu. 2, c. 2; Russell, "Medieval Theories," p. 283. Hartigan argues that the majority of medieval theologians prohibited the use of ambushes but adduces no documentary evidence to support his contention ("Noncombatant Immunity," p. 126, n. 62).

[370] Augustine, Quaestionum in Heptateuchum, VI, 10; ST, II-II, 40, 3. Thomas seems to have borrowed major elements of his treatment of ambushes directly from Alexander of Hales. The first two objections are almost identical.

[371] Alexander III at the Third Lateran Council in 1179; Decretals of Gregory IX, I, 34, 1 (Friedberg ed., II, col. 203). The original statement by Pope Innocent II found its way into the Decretum of Gratian only in truncated form (Pt. I, D. 90,

Without flatly rejecting the Truce of God, most thirteenth-century canonists emptied it of all significance by applying it only to private or unjust wars. They found support for their position in a canon of Gratian's *Decretum*. Within the *causa* on war Gratian had included the following advice of Pope Nicholas I to Bulgar Christians:

> If necessity does not urge it, not only during Lent, but at all times one ought to abstain from war. But if there is truly necessity, one can without a doubt, even during Lent, prepare for war for self-defense or defense of the native country or of the laws of the fathers. Otherwise a man would seem to *tempt God*, if, having the means to do it, he would not attend to his own safety and that of his own people and would not preserve the holy religion from detriment.[372]

In accepting warfare on holy days Thomas tacitly ignored the Truce of God and adopted the majority view of contemporary canon lawyers. His employment of the phrase "tempt God" in discussing the question indicates that he, like them, found warrant for this less restrictive position in the authoritative pronouncement of Pope Nicholas I.[373]

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c. 11). For the background of both decrees see Hartmut Hoffmann, *Gottesfriede und Treuga Dei*, Schriften der Monumenta Germaniae Historica, Vol. XX (Stuttgart: A. Hiersemann, 1964), pp. 229-233.

[372] *Decretum*, Pt. II, C. 23, qu. 8, c. 15; cf. Hoffmann, *Gottesfriede*, pp. 238-239. Russell notes that in this case two parts of the canon law, the *Decretum* and the *Decretals of Gregory IX*, contradicted one another. Most canonists accepted the precedence of Gratian's canon over the Truce-of-God decretal ("Medieval Theories," pp. 307-310). Hoffmann points out that in practice the Truce of God was a dead letter by the beginning of the thirteenth century (*Gottesfriede*, pp. 229-231).

[373] See n. 304 above. Alexander of Hales had given the same answer, explicitly quoting the advice of Pope Nicholas I (*Summa Theologica*, Bk. III, Pt. 2, Inq. 2, Tract. 2, Sec. 2,

The right to seize booty in war had been asserted by the Roman civil law and was accepted without question by the civil and canon lawyers of the twelfth and thirteenth centuries.[374] The Decretalists, in particular, devoted detailed attention to this important aspect of medieval warfare. They were in fundamental agreement in conceiving of booty as compensation or punitive damages for injuries inflicted by the enemy.[375]

Several Decretalists discussed the proper division of spoils. Again in this case a consensus-view emerged. Whereas the ancient Roman law had stipulated that moveable property should belong to the individual captor, the Decretalists argued that all booty should be reserved to the prince, who would then divide it according to individual merit.[376]

Various limitations on the right to seize booty were proposed by the Decretalists. They were unanimous in requiring that all booty taken in an unjust war be returned to its former owners. For the enforcement of this regulation they looked to

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Qu. 1, Tit. 3, Membr. 3, Cap. 2, Art. 3 [Quaracchi ed., IV/2, 688-689]). So far as I have been able to determine, no edition of Thomas' Summa theologiae has connected his use of the phrase "tempt God" with the advice of Pope Nicholas I. Chénon makes the connection in his essay on Thomas and just war ("Saint Thomas d'Aquin et la guerre," p. 107).

[374] Digest, 41, 1, 51, 1; 41, 1, 5, 7; Russell, "Medieval Theories," pp. 167, 287-303.

[375] Russell, ibid., pp. 285-287, 294-296.

[376] Ibid., pp. 288 and 346, nn. 92, 93.

the Church, particularly the ecclesiastical courts.[377] William of Rennes urged that moderation be observed in despoiling the enemy, even in a just war. He held that a warrior was bound to restitution if he inflicted excessive or disproportionate damages on the enemy.[378] In addition, some Decretalists sought to limit the circumstances under which booty could be seized. Innocent IV, for example, prohibited the taking of booty in the simple repulsion of attack. He reserved the right to take booty to the situation in which a superior prince waged war against another superior prince.[379] Finally, Raymond of Pennaforte explicitly required that a distinction be made between guilty and innocent in the seizure of booty. After conceding the general right to take booty in a just war, Raymond continued:

> But as for those subjects who, fearing God more than men, refused to aid their lord in an unlawful war with their counsel, their support, or their favor, I believe it is absolutely forbidden to

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[377] Russell, "Medieval Theories," pp. 287-288 and 345, n. 90. This position was based on a decision of Pope Innocent III, which had found its way into the Decretals of Gregory IX (see n. 213 above):

> "If it is established that the aforesaid H. unjustly made war on I., you shall endeavor to admonish H. and to induce him to restore to the plaintiff without delay all his land and all other things seized by violence. You shall also absolve the plaintiff of all vows sword to H. If H. refuses to follow your admonitions, . . . you shall force him to this by a sentence of excommunication, placing his land under the interdict" (Decretals, II, 24, 29 [Friedberg ed., II, col. 372]; author's translation).

[378] Glossa, on Raymond of Pennaforte, Summa de poenitentia, II, 5, 19; cited by Russell, "Medieval Theories," p. 294.

[379] Commentaria, on the Decretals, II, 24, 29; cited by Russell, ibid., pp. 301-302.

> despoil them. For a penalty ought to strike the authors of a delict, and it ought not to exceed the gravity of the delict.[380]

Thomas agreed with the Roman law and contemporary lawyers in approving the seizure of booty. Like the Decretalists, he restricted the right to seize booty to persons waging a just war, arguing that unjust warriors were bound to restitution.[381] In a passing remark, Thomas seems also to have agreed with the Decretalists on the division of spoils. Having quoted Ambrose's statement that spoils ought to be reserved to the sovereign, he added a phrase of his own: "namely, so that he may distribute them [to his soldiers]."[382] Although Thomas did not explicitly discuss the need for moderation in taking spoils, this emphasis of the Decretalists was in harmony with his general concern for balance in matters of commutative and punitive justice.[383]

The question whether innocent persons could lawfully be despoiled was not expressly considered by Thomas. Given his steadfast opposition to theories of collective guilt, it is possible that he would have prohibited despoiling the innocent. On the other hand, Thomas held that an innocent person could be required to forfeit goods "without guilt, but not without cause."[384] This evidence suggests that in certain circumstances he might have approved of despoiling, but not killing, innocent persons.

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[380] Summa de poenitentia, II, 5, 19 (Tallini ed., p. 188; author's translation). The Peace of God, in one of its formulations, had also prohibited despoiling the innocent. See above, n. 365.

[381] ST, II-II, 66, 8, ad 1.

[382] Ambrose, De Abraham, I, 3; ST, II-II, 66, 8, obj. 1.

[383] ST, II-II, 62, 1-3; 108, 2, ad 3.

The enslavement of prisoners was condoned by the Roman civil law as a humane alternative to putting them to death.[385] Twelfth- and thirteenth-century civil and canon lawyers generally accepted the Roman-law position with little comment.[386] However, some Decretalists added minor refinements to this basic legal provision. In the opinion of Johannes Teutonicus and others, only an army waging a just war could enslave prisoners *de jure*. Persons captured in unjust wars were only *de facto* slaves and were encouraged to escape.[387] Innocent IV stipulated that prisoners could be enslaved only in wars waged between sovereign authorities. By implication, he ruled out the enslavement of prisoners in cases of personal or collective self-defense and in domestic rebellions.[388]

To these canonistic refinements Hostiensis added a plea for restraint. He discouraged unnecessary slaughter in warfare, arguing that to kill an enemy soldier when one could capture him alive was to act immoderately. In his view restitution was incumbent upon any perpetrator of such excessive violence.[389]

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[384] ST, II-II, 108, 4, ad 2.

[385] *Digest*, 1, 5, 4, 1-3; 1, 5, 5, 1; 50, 16, 239, 1; *Institutes*, 1, 3, 1-3; 2, 1, 17; *Novellae*, 89, 1.

[386] Russell, "Medieval Theories," pp. 165-166, 223-224, 287.

[387] *Glossa Ordinaria*, on the *Decretum*, Pt. I, D. 1, c. 9; cited by Russell, *ibid*., p. 287.

[388] *Commentaria*, on the *Decretals*, II, 24, 29; cited by Regout, *La doctrine*, pp. 69-72, and Russell, "Medieval Theories," pp. 299, 301-303.

As we have seen, Thomas accepted the practice of enslaving prisoners in preference to killing them. The fact that he allowed the seizure of booty only in just wars suggests, by analogy, that he would have condoned the enslavement of prisoners only under similar circumstances.[390]

The employment of specific weapons in warfare was also a matter for discussion in the twelfth and thirteenth centuries. A canonistic consensus approved the use of incendiaries in battle, but only in just wars.[391] On the subject of crossbows, however, there was difference of opinion among both theologians and canon lawyers. A decree of the Second Lateran Council in 1139 had attempted to limit the use of this military innovation:

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[389] Commentaria, on Liber Sextus Decretalium, V, 4, 1; cited by Russell, "Medieval Theories," p. 290. One question not explicitly treated by the civil and canon lawyers before Thomas was whether Christians could enslave Christian prisoners of war. I have not been able to discover any instance of such enslavement in the thirteenth century. About 75 years after Thomas' death Bartolus of Sassoferato, a civil lawyer, noted that "according to the mores of modern times and a custom observed from ancient times among Christians," Christian captors did not enslave Christian prisoners of war (Commentaria in secundam Digesti novi partem, De captivis et postliminio; cited by Ernest Nys, Le droit de la guerre et les précurseurs de Grotius [Brussels: Librairie Européenne C. Muquardt, 1882], pp. 135-136 [author's translation]). Arthur Nussbaum writes that the enslavement of Christians by Christians had already been forbidden by the Third Lateran Council of 1179, but I find no evidence in the conciliar decrees to support his statement (A Concise History of the Law of Nations [revised ed.; New York: Macmillan Company, 1953], p. 18).

[390] See n. 380 above. Schilling faults Thomas for uncritically accepting "traditional legal principles" in Thomas' discussion of booty and prisoners of war (Staats- und Soziallehre, p. 206). Heinrich A. Rommen agrees, arguing that Thomas "remains in many matters too dependent upon Roman law in its application to warfare" (The State in Roman Catholic Thought: A Treatise in Political Philosophy [St. Louis: B. Herder Book Co., 1945], p. 666, n. 18).

> We forbid, under penalty of anathema, that the death-dealing and God-detested art of slingers and crossbowmen be in the future employed against Christians and Catholics.[392]

The inclusion of the decree in the Decretals of Gregory IX a century later ensured its continued discussion.

Among both theologians and canonists there was strong sentiment against the crossbow. Peter the Chanter expressed his disdain for the crossbowman's trade by citing it as a profession in which one lost salvation because of receiving his entire living from the slaughter of innocent victims.[393] A minority of the canonists took the decree quite literally, forbidding the use of the crossbow against Christians but permitting its employment against the Moslem Saracens.[394] In the end, however, prudence prevailed and military technology triumphed. Most canon lawyers accepted the use of crossbows in all just wars, whether waged against Saracens or against Christians.[395]

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[391] Russell, "Medieval Theories," pp. 285-286.

[392] Decretals of Gregory IX, V, 15 (Friedberg ed., II, col. 805; author's translation).

[393] Baldwin, Peter the Chanter, I, 223-224.

[394] Russell, "Medieval Theories," pp. 283-284.

[395] Ibid., pp. 283-285.

Similarly, Peter the Chanter and his circle conceded that the crossbow might be employed both in defense of the Holy Land and in defense of the realm.[396] Thomas did not comment on incendiaries or crossbows, perhaps preferring to leave such casuistry to other scholars.

Relation to Ethical Theory

Having previously discussed the object and the who- and when-circumstances of permissible war, Thomas turned to the how-question, which we have analyzed in terms of intention and means. The task of relating Thomas' discussion of intention to his ethical theory is relatively simple. When Thomas required a right intention in the waging of war--namely, the intention to advance a natural or supernatural good--it is clear that he wished to specify the "proper end" of warfare.[397]

It is somewhat more difficult to relate Thomas' discussion of means to his general ethical theory. On the one hand,

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[396] Baldwin, Peter the Chanter, I, 224; cf. Chap. I, n. 58.

[397] Thomas' concern both with the intention of the agent and with the object and circumstances of his act indicates that he took a mediating position in a Scholastic ethical controversy. Peter Abelard (d. 1142) had taken the position that all human acts were morally neutral in themselves and that the agent's intention was the sole determinant of their morality. Stephen Langton (d. 1228) advocated the opposite thesis, arguing that the morality of an act was determined almost exclusively by its object and the circumstances in which it was done. Peter Lombard (d. 1160) and Thomas took the middle position, arguing that the intention was the primary determinant of morality but that the object and circumstances of an act were always morally relevant and sometimes morally decisive. For this summary I am indebted to Warren, "End," p. 337.

XUM

such acts as breaking faith with the enemy or killing the innocent[398] might conceivably have been classified as circumstances of the act of waging war.[399] On the other hand, breaking faith and killing the innocent might have been categorized as objects in their own right, on a par with the object of war. In view of Thomas' absolute prohibition of these two means we are probably justified in regarding them as independent objects.[400]

Adding Thomas' discussion of the how-question to his previous analysis of the whether, who, and when of permissible war, we arrive at the following comprehensive and final statement of his position on the morality of war:

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[398] Of the means discussed by Thomas only the two fundamental prohibitions were of importance for his general ethical theory. Four of the specific means were, in Thomas' view, always permitted in an otherwise permissible war. They can therefore be subsumed under the object, war. The relation of a peace-offer to the morality of war was not specified by Thomas.

[399] Presumably such acts would have fallen under one of two circumstances enumerated by Thomas, either "by what means" (quibus auxiliis) or "in what manner" (quomodo). See n. 34 above.

[400] In modern terms, we are faced with the problem of describing an act. My thesis is that Thomas would have regarded killing the innocent in warfare as killing the innocent rather than as warfare. At the very least he would have regarded killing the innocent in warfare as two simultaneous acts, the first of which was inherently immoral and the second of which was either moral or immoral, depending on a number of factors. An analogous argument can be made for promise-breaking. The problem of the morality of such acts can be logically distinguished from the question, discussed above, whether the immorality involved in committing them is injustice or some other variety of immorality.

Two modern philosophical discussions of the complexities involved in describing a human act are: G. E. M. Anscombe, Intention (Oxford: Basil Blackwell, 1963), pp. 8-9, 37-41; and Eric D'Arcy, Human Acts: An Essay in Their Moral Evaluation (Oxford: Clarendon Press, 1963), pp. 1-39.

> It is morally right for a layman (circumstance) to wage war (object) but not to lie or break promises (object) or to kill innocent persons (object), provided that the war is declared by the authority of the prince or the Church (circumstance); provided that a just cause or a suitable cause is present (circumstance); and provided that a natural or supernatural good is intended (end).

In the view of Thomas Aquinas, participation in warfare was morally justified only if all of these conditions were simultaneously fulfilled.

PART II: THE JUST WAR IN THE THOUGHT OF VITORIA, SUAREZ, GENTILI, AND GROTIUS

XUM

CHAPTER III

THE FOUR LATER THEORISTS: HISTORICAL BACKGROUND, BIOGRAPHICAL DATA, AND LITERARY RELATIONS

Historical Background

We turn our attention now from the thirteenth century to the sixteenth and seventeenth centuries and from Thomas Aquinas to four later just-war theorists: Vitoria (1492-1546), Suárez (1548-1617), Gentili (1552-1608), and Grotius (1583-1645). The present chapter attempts to sketch the general setting of the four later theorists and to provide a brief introduction to the life and work of each. For the sake of completeness, the survey includes an account of socio-political and intellectual developments between Thomas and Vitoria, that is, during the fourteenth and fifteenth centuries.

Socio-Political Background

Fourteenth and fifteenth centuries

If the thirteenth century saw the rise of national states, the next two centuries were a period of national consolidation. By the end of the fifteenth century the nations of England, France, Spain, Portugal, Switzerland, Austria, Hungary, and Poland had assumed approximately their mid-twentieth-century boundaries. Russia had ejected the Tartars in 1480. Although

XUM

nominally ruled by Denmark, Sweden and Norway were virtually autonomous states. There were, however, unconsolidated regions of Europe at the end of the fifteenth century. The Low Countries, including present-day Belgium and the Netherlands, were comprised of seventeen distinct provinces. Present-day Italy was divided into numerous diminutive communes and five major autonomous states: the Duchy of Milan, the Republic of Florence, the Republic of Venice, the Papal State, and the Kingdom of Naples. Italy's fragmentation, however, was nothing compared with that of "Germany," which included no less than three hundred virtually autonomous political units.[1]

The period between Thomas and Vitoria was not an era of uninterrupted peace. However, a brief overview of fourteenth- and fifteenth-century wars reveals that they were isolated phenomena which normally did not involve more than two parties or nations at a time. In Oman's words, the military history of the period was "shut up in many water-tight compartments."[2] During parts of both centuries the Hundred Years' War was fought between England and France, and Italy experienced civil wars.[3] Other isolated fifteenth-century conflicts included the following:

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[1] Harold J. Grimm, The Reformation Era, 1500-1650 (revised ed.; New York: Macmillan Co., 1965), pp. 21-36, 235, 241). Of the three hundred German principalities, only the thirty largest kingdoms, archbishoprics, duchies, and margraviates played significant political roles.

[2] Charles Oman, A History of the Art of War in the Sixteenth Century (New York: E. P. Dutton and Company, [1937]), p. 3. Hereafter cited as Sixteenth Century.

[3] Oman, Art of War, II, vi-x, viii.

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[3] Oman, Art of War, II, vi-x, viii.

(1) the Spanish wars for national unification; (2) the wars of the Swiss Confederates with their neighbors; (3) the Hussite rebellion in Bohemia; (4) Turkish-Christian wars in southeastern Europe; (5) struggles between the Teutonic Knights and Poland-Lithuania; (6) the Russian expulsion of the Tartars; (7) constant bickering between Denmark and Sweden; and (8) the War of the Roses in England.[4]

During the two centuries between Thomas Aquinas and Vitoria several military innovations were introduced. When the English invaded France in the mid-fourteenth century, they brought a new weapon to the Continent--the longbow. The new weapon far surpassed the crossbow in force, accuracy, and rate of fire. At a distance of 220 yards the six-foot longbow could strike its target accurately and with sufficient power to pierce enemy breastplates or pin helmets to heads.[5] About 1450 cannons were introduced into European and Turkish arsenals. With the aid of this new kind of artillery the Turks battered down the walls of Constantinople, and the French chased the cannon-less English from the Continent.[6] During most of this period armies were raised temporarily to meet particular threats and consisted primarily of knightly vassals and hired mercenaries. However, about the middle of the fifteenth century Charles VII, King of

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[4] Ibid., II, viii-x; Oman, Sixteenth Century, p. 3; Grimm, Reformation Era, p. 34.

[5] Montross, War, pp. 168-170.

[6] Oman, Sixteenth Century, p. 28.

France, formed a small, permanent national standing army.[7]

Given the "water-tight" character of wars during this period, it is understandable that such military innovations were not universally or simultaneously adopted. For example, the fifteenth-century wars among the various Italian city-states were waged without the use of modern weapons-technology and with a singular lack of destructiveness. The mercenary-chiefs, or condottieri, who were hired by the city-states waged war like "a friendly game of chess," seeking only to outmaneuver and capture the enemy.[8] Machiavelli complained that at the battle of Zagonara (1424),

> in a rout celebrated all over Italy no one died save Ludovico degli Obizzi and two of his men who were thrown from their horses and smothered in a muddy ditch.[9]

Similarly, Machiavelli noted that at the Battle of Molinella (1427) his Florentine fellow-citizens and the enemy

> came together to a general action which lasted half a day without either party giving way: nevertheless no one was killed, though there were some horses slain and some prisoners taken on each side.[10]

When Bolognese mercenaries broke the rules of the game in 1439 by shooting at Venetian mercenaries with hand-guns, the conventionally-armed Venetian side was outraged. In retaliation

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[7] Montross, War, pp. 185-186.

[8] Oman, Art of War, II, 308.

[9] History of Florence, IV, 1; quoted by Oman, Art of War, II, 309.

[10] History of Florence, VII, 2; quoted by Oman, ibid.; cf. Bainton, Christian Attitudes, pp. 122-123.

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for the use of such a cruel and cowardly innovation, the victorious Venetian mercenaries massacred all of the enemy's hand-gun men.[11]

Sixteenth and early seventeenth centuries

During the lifetimes of the four later theorists, or between 1500 and 1650, war was waged almost constantly by or between the nations of Europe. Major conflicts occurred on the European Continent, at sea, and in the newly discovered territories of Latin America and Asia. The most important wars of the period were the following:

1. Great Italian wars between France and Spain, 1494-1559.
2. Portuguese conquests in India and the East Indies, 1510-1550.
3. Turkish-Christian wars in southeastern and southern Europe, 1520-1606.
4. Spanish conquests in Mexico, Peru, Columbia, and Chile, 1519-1580.
5. Protestant-Catholic wars in the Swiss Confederacy, 1529-1531.
6. Protestant-Catholic wars in Germany, 1530-1555.
7. Protestant-Catholic wars in France, 1562-1598.
8. Spanish conquest of the Philippines, 1564-1600.
9. Dutch war for independence from Spain: phase 1, 1567-1609.
10. English-Spanish naval wars, 1587-1604.
11. Dutch-Portuguese disputes over the East Indian trade, 1595-1609.
12. Dutch wars with the East Indians and English traders, 1618-1646.
13. Dutch war for independence from Spain: phase 2, 1621-1648.
14. Thirty Years' War:
    Bohemian Period (1618-1620);
    Palatinate Period (1621-1623);
    Danish Period (1625-1629);

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[11] Oman, Art of War, II, 309.

Swedish Period (1630-1635);
Franco-Swedish Period (1635-1648).
15. Puritan revolution in England, 1642-1649.[12]

Trends in Continental land wars

The Continental wars of 1500 to 1650 constituted a distinct epoch in the history of European warfare. Unlike the isolated, local conflicts of the fourteenth and fifteenth centuries, the wars of this epoch

> gradually grow into one single complex, in which Spain, Italy, France, Germany, the Netherlands, Hungary, and the Ottoman Empire are all involved together.[13]

Oman estimates that these Pan-European complications "set nine-tenths of Europe ablaze."[14]

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[12] Sources for this list of wars are the following works:

1. Oman, Sixteenth Century, pp. 27, 130.
2. Kenneth Scott Latourette, A History of the Expansion of Christianity, Vol. III: Three Centuries of Advance: A.D. 1500 - A.D. 1800 (New York: Harper & Brothers Publishers, 1939), p. 300. Hereafter cited as Expansion, III.
3. Oman, Sixteenth Century, pp. xii, 686, 698.
4. Latourette, Expansion, III, 83-84.
5. Grimm, Reformation Era, pp. 207-210.
6. Ibid., pp. 212-223; 254-264.
7. Oman, Sixteenth Century, p. xi.
8. Latourette, Expansion, III, 309.
9. Grimm, Reformation Era, pp. 435-445.
10. Ibid., pp. 473-474.
11. T. Walter Wallbank, Alastair M. Taylor, and Nels M. Bailkey, Civilization Past and Present (2 vols., 5th ed.; Chicago: Scott, Foresman and Company, 1965), I, 565.
12. J. B. Harbison, "Europe and Asia," in The New Cambridge Modern History, Vol. IV: The Decline of Spain and the Thirty Years' War, 1609-48/59, ed. by J. P. Cooper (Cambridge: University Press, 1970), pp. 650-652.
13. Grimm, Reformation Era, pp. 512, 522.
14. Ibid., pp. 507-523.
15. Ibid., pp. 562-565.

[13] Oman, Sixteenth Century, p. 5.

[14] Ibid.

The distinctiveness of warfare during the period of the four later theorists was, however, not only quantitative. Qualitatively, the wars which the theorists observed were infinitely more destructive than either the Italian war-games of the fifteenth century or the armed diplomacy of the late seventeenth century. Wars of religion, frequent during the period from 1500 to 1650, were waged with special fervor. In a retrospective summary of the era Montross comments:

> For a century and a half men had been fighting with more zeal than discretion, as is generally the case in conflicts waged to uphold principles. Blood had been spilled without stint by pitiless armies which recognized few rights of the captive or civilian. Massacre had become the rule rather than the exception, and whole provinces were depopulated as a consequence of plague, famine, and pillage.
>
> From this extreme it seems to the modern observer only an overnight transition to the most temperate military era since the Renaissance. Beginning about the year 1660, men appeared by tacit consent to have agreed upon a warfare of moderation which lasted until the outbreak of the French Revolution in 1789. Armies were composed entirely of long-term troops held in such discipline that hanging for the theft of a barnyard fowl was not unknown. Looting and devastation reached a minimum among forces which received their pay, food, and clothing from the state.[15]

Armies of the sixteenth and early seventeenth centuries were comprised primarily of hired foreign mercenaries. Attempts to wage war with a citizen-militia based on compulsory military service generally ended in failure and were abandoned.[16] The most readily available professional soldiers were Swiss, German, and Italian mercenaries, already trained in their military specialities and willing to fight in any cause for any length of time, if the price was right. Without scruple mercenaries fought against their countrymen or co-religionists. Troops who fought chiefly for material gain were not averse to double-dealing, mutiny, or plundering civilian populations.[17]

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[15] War, p. 313; cf. Oman, Sixteenth Century, pp. 90-91.

[16] J. W. Wijn, "Military Forces and Warfare, 1610-48," in New Cambridge Modern History, IV, 203-205; cf. J. R. Hale, "Armies, Navies and the Art of War," in The New Cambridge Modern History, Vol. III: The Counter-Reformation and Price Revolution, 1559-1610, ed. by R. B. Wernham (Cambridge: University Press, 1968), pp. 174-175, 179-183.

In reaction to the mercenaries' excesses and lack of discipline there emerged, during the middle decades of the seventeenth century, a trend toward the establishment of indigenous, national standing armies. France, which had already possessed a small standing army in the fifteenth century, gradually expanded that nucleus; but it was Gustavus Adolphus of Sweden who introduced basic reforms in military recruitment and discipline. His national army was recruited in part on the basis of a draft lottery: one of ten males between the ages of fifteen and sixty was selected by lot. In addition, Gustavus enforced strict discipline both in camp and in battle, often referring to his copy of Grotius' On the Law of War and Peace for guidance.[18]

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[17] Montross, War, pp. 204-205; Wijn, "Military Forces," pp. 38-39, 65-66, 77-79.

[18] Wijn, "Military Forces," pp. 202, 224-225; J. R. Hale, "Armies, Navies, and the Art of War," in The New Cambridge Modern History, Vol. II: The Reformation, 1520-59, ed. by G. R. Elton (Cambridge: University Press, 1958), pp. 489-491; Montross, War, pp. 266-267. Gustavus' use of Grotius' work is noted by C. V. Wedgwood in The Thirty Years War (New Haven: Yale University Press, 1939), p. 271, n. 3.

It should be noted, however, that even the standing armies of the mid-seventeenth century included varying numbers of foreign mercenaries. Indeed, during Gustavus' German campaign of 1632 German mercenaries outnumbered his own Scandanavian troops two to one. Appalled by the indiscipline of his mercenary troops, Gustavus was moved to exclaim:

> They are no Swedes who commit these crimes, but you Germans yourselves. . . . Had I known that you were a people so wanting in natural affections for your own country, I would never have saddled a horse for your sakes, much less imperiled my life and my crown and my brave Swedes and Finns.[19]

Besides religious passion and mercenary unscrupulosity two other factors at least potentially contributed to the destructiveness of war during the period of the four later theorists: the relatively large numbers of troops involved and the employment of new weapons. If the French-Spanish wars in Italy began modestly with 20,000 troops on each side, the number of troops increased in the later campaigns, sometimes attaining the figure of 50,000 men per side.[20] According to the most reliable estimates, 25,000 Christians faced 70,000 Moslems at the Battle of Mohacs in Hungary.[21] During the Thirty Years' War armies of 35,000 were not uncommon; at the Battle of Alte Veste a total of 98,000 troops participated.[22] The number of soldiers enrolled in a single army sometimes reached 100,000.[23]

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[19] Montross, War, 281; cf. Wedgwood, Thirty Years War, p. 321.

[20] Oman, Sixteenth Century, pp. 34, 190, 255.

[21] Ibid., p. 662.

These large numbers of troops were better equipped than had been their predecessors. Between 1500 and 1525 the first effective firearm, the arquebus, was introduced *en masse* into the Spanish and French armies.[24] By 1600 the arquebus was obsolete, having been replaced by the musket, which doubled its range and load.[25] Parallel improvements in the technology of the pistol, field artillery, and cartridges also tended to increase the lethal effectiveness of seventeenth-century armies.[26] At the same time, however, the art of fortification advanced sufficiently to allow the best-protected cities to withstand siege and bombardment almost indefinitely.[27]

Trends in naval and foreign wars

The period from the birth of Vitoria to the death of Grotius was the first major epoch of foreign discovery and conquest by European nations. Portugal, Spain, France, England, and Holland established colonies in Africa, the Americas, and

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[22] Montross, *War*, pp. 274-275; Wedgwood, *Thirty Years War*, p. 373; E. A. Beller, "The Thirty Years War," in *New Cambridge Modern History*, IV, 338-339.

[23] Montross, *War*, pp. 265, 280.

[24] Oman, *Sixteenth Century*, pp. 45, 52.

[25] Montross, *War*, p. 236.

[26] *Ibid*., pp. 238-239, 269-270, 273.

[27] *Ibid*., pp. 251-254; Oman, *Sixteenth Century*, p. 28.

Asia. Of all the European conquerors, the Spanish conquistadores were especially noted for their violent treatment of native populations. Cortés in Mexico (1519-1529) and Pizarro in Peru (1530-1541) subjugated the Aztecs and Incas by a combination of treachery and brutality. Although the excesses of the conquistadores were gradually tempered by the Spanish administrative bureaucracy, outbreaks of violence continued to occur.[28] A secret investigation of Antonio de Mendoza, the first royal administrator of Mexico, contained the following accusation:

> After the capture of the hill of Mixtón [in 1542], many of the Indians taken in the conquest of the said hill were put to death in his presence and by his orders. Some were placed in line and blown into bits by cannon fire; others were torn to pieces by dogs; and others were given to Negroes to be put to death, and these killed them with knife thrusts, while others were hung. Again, at other places, Indians were thrown to the dogs in his presence.[29]

Even in peacetime the Spanish forced-labor system, particularly the Spaniards' use of Indians in the mines, produced many casualties.[30] The combination of war, overwork, and disease drastically reduced the Indian population in the Spanish colonies. In central Mexico, for example, the Indian population declined from 11,000,000 in 1519, just before the arrival of Cortés, to

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[28] Latourette, Expansion, III, 89-91; J. H. Parry, "The New World, 1521-1580," in New Cambridge Modern History, II, 571-574, 578-581, 588-589; Wallbank, Taylor, and Bailkey, Civilization, I, 559-561.

[29] Lewis Hanke, The Spanish Struggle for Justice in the Conquest of America (Philadelphia: University of Pennsylvania Press, 1949), p. 89.

[30] Ibid.

2,500,000 in 1597.[31] Fortunately, from the Spanish point of view, the depleted Indian population could be supplemented by importing slave labor from "Portuguese" West Africa.[32]

The establishment of European colonies in foreign lands both symbolized and intensified the competition among European nations for commercial advantage. According to the theory of mercantilism, national security lay in economic self-sufficiency; consequently the struggle for markets and sources of raw materials and precious metals often led to international conflicts.[33] In the East Indies, Dutch traders first complained about Portugal's trade monoply, then ousted the Portuguese, and concluded by establishing a monopoly of their own which excluded British commerce.[34] The Atlantic competition was chiefly between England and Spain. With the connivance of Queen Elizabeth I, English privateers plundered Spanish ships, seizing both wares and gold. English privateering, Elizabeth's aid to Dutch rebels, and England's persistence in the Protestant heresy combined to goad Philip II of Spain into action. In 1588 he launched the powerful

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[31] Parry, "New World," pp. 582-583; cf. Hanke, Spanish Struggle, pp. 89-90.

[32] Parry, "New World," pp. 585-587; Latourette, Expansion, III, 90.

[33] E. E. Rich, "Expansion as a Concern of All Europe," in The New Cambridge Modern History, Vol. I: The Renaissance, 1493-1520, ed. by G. R. Potter (Cambridge: University Press, 1957), pp. 445-447; Wallbank, Taylor, and Bailkey, Civilization, I, 569-570.

[34] Wallbank, Taylor, and Bailkey, Civilization, I, 565; Harbison, "Europe and Asia," pp. 650-652.

Spanish Armada against England. As is well known, Philip's plans for the chastisement and re-conversion of England sank with the galleons of the "Invincible" Armada. Nevertheless, the naval war between England and Spain continued spasmodically until 1604.[35]

Intellectual Background

From the death of Thomas Aquinas (1274) to the mid-seventeenth century, discussions of permissible war were carried on primarily by three groups of scholars: canon lawyers, civil lawyers, and theologians. Among the many scholars who took part in the 375 years of discussion and debate the most important were the following:

Canon Lawyers[36]	Civil Lawyers[37]	Theologians
Monaldus (d. 1288?)		Henry of Ghent (d. 1293)
Astesanus (d. ca. 1330) Bartholomew of Pisa (d. after 1338) Johannes Andreas (d. 1348) Legnano (d. 1383)	Bartolus of Sassoferato (d. 1357) Legnano (d. 1383) Lucas de Penna (d. ca. 1390)	
Paulus Vladimiri (d. 1435) Nicolaus de Tudeschi (Panormitanus) (d. 1445) Martin da Lodi (d. ca. 1450)	Baldus (d. 1400) Fulgosius (d. 1427)	Henry of Gorychum (d. 1431) Gabriel Biel (d. 1495)

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[35] Grimm, Reformation Era, 473-474; Rich, "Expansion," pp. 457, 463.

[36] This category includes writers of confessional *summae*.

[37] International lawyers are included under this category.

Canon Lawyers	Civil Lawyers	Theologians
Antoninus of Florence (d. 1459) Baptiste Trovamala de Salis (d. after 1483) Carletti (d. 1495) Giovanni Lupus (Lopez) (d. 1496)		
Sylvester of Priero (d. 1523) Arias (d. 1533) Cajetan (d. 1534) Belli (d. 1577) Covarruvias (d. 1577) Navarrus (Azpilcueta) (d. 1586)	Alciatus (d. 1550) Belli (d. 1575) Ayala (d. 1584)	Guillaume Mathiae (d. 1518) Adrian Boeyens (d. 1523) Cajetan (d. 1534) Erasmus (d. 1536) Clichthove (d. 1543) Luther (d. 1546) *Vitoria* (d. 1546) John Major (d. 1550) Alfonse a Castro (d. 1558) De Soto (d. 1560) Calvin (d. 1564) Las Casas (d. 1566) Sepúlveda (d. 1573)
	Gentili (d. 1608) *Grotius* (d. 1645)	Molina (d. 1600) Gregory of Valentia (d. 1603) Bañez (d. 1604) Vasquez (d. 1604) *Suárez* (d. 1617) Bellarmine (d. 1621) Lessius (d. 1623) *Grotius* (d. 1645).[38]

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[38] Two historians of feudal institutions who do not fit the above categories were Honoré de Bonet (d. after 1385) and Christine de Pisan (d. 1431). The names listed under the three categories were gleaned from the following works: Regout, *La doctrine*; Vanderpol, *La doctrine scolastique*; D. Beaufort, *La guerre comme*

Generally speaking, the above theorists introduced certain refinements into the just-war tradition and applied their theories to new situations. The various academic disciplines which they represented were by no means water-tight compartments: their writings reflected continuing interchange among the fields of canon law, civil law, and theology. In fact, several of the theorists listed above achieved competence in more than one discipline.

On the purely political level the theorists' major concerns were the increasingly-frequent wars among European nation-states and policy toward the newly-discovered overseas territories.[39] Religious wars also continued to be discussed. In the fifteenth and early-sixteenth centuries the ancient crusades to the northeast and southeast received renewed attention. When apologists for the Teutonic Knights justified continuing warfare against the pagan Lithuanians, the Polish canonist Paulus Vladimiri retorted that Poland-Lithuania was a Christian nation and that the campaigns of the overzealous Germans constituted unjust

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instrument de secours ou de punition (The Hague: Martinus Nijhoff, 1933); von Elbe, "Evolution," pp. 665-688; Thomas Erskine Holland, "The Early Literature of the Law of War," Studies in International Law (Oxford: Clarendon Press, 1898), pp. 40-58; Bernice Hamilton, Political Thought in Sixteenth-Century Spain: A Study of the Political Ideas of Vitoria, De Soto, Suárez, and Molina (Oxford: Clarendon Press, 1963); Ian Brownlie, International Law and the Use of Force by States (Oxford: Clarendon Press, 1963), pp. 3-18; and Belch, Paulus Vladimiri.

[39] Regout, La doctrine, p. 22; Rommen, State in Roman Catholic Thought, pp. 669-670.

aggression against his homeland.[40] In 1499 and again in 1517 the Papacy called for new crusades against the Turks. Grandiose schemes for the reconquest of the Holy Land were entertained by some of the most powerful Christian kings: Henry VIII of England; Charles VIII and Francis I of France; and the Hapsburg Emperor Charles V.[41] By the late sixteenth century, however, the central focus of attention had shifted to the domestic scene and the newfound colonies. In Europe the two incompatible ideals were the suppression of heresy and the establishment of national Reformed churches; abroad the debate centered on the use of military force in evangelizing pagans.[42]

As the controversy between Vladimiri and his opponents suggests, the most significant issue was sometimes the description of a particular war in either political or religious terms. A similar situation was to occur 175 years later in the Low Countries, when the Spaniards set out to extirpate the heresy of their rebellious subjects while the Dutch, for their part, sought to wage a war of national liberation.[43]

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[40] Belch, Paulus Vladimiri, I, 86-87, 118, 123-128, 220. a treatise written by one of Vladimiri's opponents, Ioannes Vrebach de Bamberga, appears ibid., II, 1107-1180.

[41] Oman, Sixteenth Century, p. 4; J. R. Hale, "International Relations in the West: Diplomacy and War," in New Cambridge Modern History, I, 264.

[42] Oman, Sixteenth Century, p. 4; Hanke, Spanish Struggle, esp. chap. 6; Belch, Paulus Vladimiri, I, 89, n. 277.

[43] The Dutch-Spanish struggle is discussed in more detail in Chap. IV.

Pacifist views were expressed by a minority during these centuries. The first identifiable pacifist-group was a branch of the fifteenth-century Hussite movement--a branch whose theoretical spokesman was Peter Chelčiký. A century later the humanist-scholars Erasmus and Sebastian Franck approached, if they did not espouse, total pacifism.[44] But it was the Anabaptists, a radical Reformation group, who constituted the largest pacifistic movement of the period. The founders of the group argued on scriptural and theological grounds that all participation in warfare was forbidden to Christians.[45] Persecution by both Protestants and Catholics spread the Anabaptists and their pacifist views to southern Germany, Austria, Moravia, Poland, and the Low Countries.[46]

In sharp contrast to both the pacifist and just-war traditions, two political theorists of the period denied the direct applicability of ethical standards to the question of war. Machiavelli argued that necessities of state, rather than considerations of justice or religion, should ultimately determine a nation's military policy.[47] In a somewhat more philosophical vein, Hobbes denied that moral judgments could be applied to international relations, arguing that between nations the state of nature, i.e., of incessant conflict, persisted.[48]

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[44] Bainton, Christian Attitudes, pp. 120, 128, 131-135.

[45] For a comprehensive study of the various grounds upon which the Anabaptists based their pacifism see Clarence Bauman, Gewaltlosigkeit im Täufertum: eine Untersuchung zur theologischen Ethik des oberdeutschen Täufertums der Reformationszeit, Studies in the History of Theology, Vol. III (Leyden: E. J. Brill, 1968).

[46] Bainton, Christian Attitudes, pp. 153-157; cf. George Hunston Williams, The Radical Reformation (Philadelphia: Westminster Press, 1962), chaps. 6-9, 14-16.

Biographical Data

The four later theorists can be viewed synoptically from several perspectives. In terms of life-span Vitoria' death in 1546 pre-dated the birth of the other three theorists. Two of the theorists, Suárez (1548-1617) and Gentili (1552-1608) were almost exactly contemporary; Grotius, born a generation later in 1583, was at least partially contemporary with Suárez and Gentili. An investigation of the theorists' nationalities reveals that Vitoria and Suárez were Spaniards; Gentili and Grotius were born in Italy and Holland, respectively. However, the native Italian and Dutch theorists, both victims of religious intolerance, were forced to spend substantial portions of their adult lives as exiles--Gentili in England and Grotius in France. In terms of religious confession Vitoria and Suárez were Roman Catholic members of the Dominican and Jesuit orders, respectively. Gentili's

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[47] Bainton, Christian Attitudes, pp. 124-127. For a detailed account of Machiavelli's political views and their impact on later reason-of-state theories see Friedrich Meinecke, Machiavellism: The Doctrine of Raison d'Etat and Its Place in Modern History, trans. by Douglas Scott (New Haven: Yale University Press, 1957).

[48] Thomas Hobbes, De cive or the Citizen, ed. by Sterling P. Lamprecht (New York: Appleton-Century-Crofts, 1949), II, 13, 7: ". . . The state of commonwealths considered in themselves, is natural, that is to say, hostile" (p. 144); cf. Van Vollenhoven's citations from De cive in C. Van Vollenhoven, "Grotius and Geneva," Bibliotheca Visseriana, VI (1926), Appendix O, pp. 67-70.

Protestantism most nearly approximated the Calvinist tradition, although he eventually joined the Church of England. In early life an Arminian Protestant, Grotius gradually shifted toward a quasi-Anglican position.[49]

Vitoria

The life of Vitoria can be quite easily divided into six periods: (1) birth and youth in Burgos, 1492-1506; (2) study at the Dominican convent San Pablo de Burgos, 1506-1510; (3) further study in Paris at the Dominican College of St. James and the University of Paris, 1510-1523; (4) first teaching position at the College of St. Gregory in Valladolid, 1523-1526; (5) prima professorship at the University of Salamanca and residence at the College at St. Esteban, 1526-1546; and (6) death in Salamanca, 1546.[50]

The years between 1492 and 1546 constituted perhaps the apex of Spain's "Golden Age." The marriage of Ferdinand and

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[49] For Gentili's religious views see Gesina H. J. Van der Molen, Alberico Gentili and the Development of International Law: His Life Work and Times (2d ed., revised; Leyden: A. W. Sijthoff, 1968), pp. 245-267. For Grotius' views see W. W. M. Knight, The Life and Works of Hugo Grotius, The Grotius Society Publications, No. 4 (London: Street & Maxwell, 1925), 150-163, 167-182, 267-284.

[50] Luciano Pereña, "Introducción," in Francisco de Vitoria, Escritos políticos, ed. by Luciano Pereña, El pensamiento político hispanoamericano, Vol. II (Buenos Aires: Ediciones Depalma, 1967), pp. IX-XIV; Vicente Beltrán de Heredia, "Personalid del maestro Francisco de Vitoria y transcendencia de su obra doctrinal," in Francisco de Vitoria, Relectio de Indis: o libertad de los Indios, ed. by L. Pereña and J. M. Perez Prendes, Corpus Hispanorum de pace, Vol. V (Madrid: Consejo Superior de Investigaciones Cientificas, 1967), pp. XII-XXI. There is no recent full-length biography of Vitoria.

Isabella in 1469 had united the Spanish kingdoms of Aragon, Castile, and Leon. In 1482 these "Catholic sovereigns" had further consolidated their kingdom by waging a successful crusade against Granada, the last Moorish stronghold on the Iberian Peninsula. In 1492, the year of Vitoria's birth, Columbus made his well-known voyage to the New World.[51]

For most of Vitoria's adult life the Emperor Charles V was King of Spain. As Emperor he ruled over a vast realm which included Spain, part of Burgundy, the Kingdom of Naples, Sicily, Austria, "Germany," and the Low Countries, plus Spanish possessions in the New World. In part because of his responsibility for such far-flung possessions Charles V found himself embroiled in almost constant warfare on three fronts. With King Francis I of France Charles repeatedly went to war over Burgundy, the Duchy of Milan, and the Kingdom of Naples. In the 1520's and 1530's Charles waged war against the Moslems in Austria, the Kingdom of Naples, Spain, and north Africa. On a third front, the defection of many German princes to Lutheranism threatened to undermine the religious unity of Charles' Holy Roman Empire. At the same time Charles was obliged to oversee the activities of Spanish conquistadores in the New World, particularly in Mexico and Peru. Because of his preoccupation with France, the Moslems, and the New World the Emperor for many years virtually ignored the

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[51] Grimm, Reformation Era, pp. 21-23; Wallbank, Taylor, and Bailkey, Civilization, I, 413-414, 558.

Protestant revolt.[52]

In addition to these turbulent political events of Vitoria's lifetime, certain intellectual trends of the early sixteenth century exerted an influence on his thought. One major formative influence was clearly humanism. Shortly before Vitoria entered the Dominican convent of Burgos, Spanish Dominicans, noting that "study is the glory of our Order," had introduced a new curriculum which stressed grammatical studies of original texts. In his four years at Burgos and his first three years in Paris Vitoria devoted most of his time to such humanistic studies. Among his friends were Luis Vives and Juan Vaseo, both Spanish humanists. Unlike some sixteenth-century scholars--for example, Erasmus--Vitoria attempted to incorporate humanistic learning into a scholastic framework.[53]

A second formative influence on Vitoria was a renaissance within scholasticism, or more precisely, the sixteenth-century rediscovery of Thomas Aquinas. Spearheaded by Cajetan in Italy, the movement soon spread to Heidelberg[54] and Paris. In Paris the

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[52] Grimm, Reformation Era, pp. 120-124, 212-223, 254-264; Latourette, Expansion, III, 83-84; Oman, Sixteenth Century, pp. xii, 686, 698. For a year-by-year survey of Vitoria's lifetime which includes reference to major contemporary political events see Luis G. Alonso Getino, El maestro Fr. Francisco de Vitoria: su vida, su doctrina e influencia, Publicaciones de la Asociación Francisco de Vitoria, Vol. I (Madrid: Imprenta Católica, 1930), pp. 380-400.

[53] Hamilton, Political Thought, p. 174; Beltrán de Heredia, "Personalidad," pp. XVI-XIX; Pereña, "Introducción," p. XI.

[54] For a good recent account of the Thomistic renaissance and of Conrad Koellin, who brought the revival to Heidelberg,

Flemish Peter Crockaert was the first professor to base his lectures on the Summa theologiae of Thomas Aquinas. Vitoria was apparently deeply impressed by Crockaert's lectures: beginning in 1512 he collaborated with Crockaert in preparing the first modern edition of Thomas' Secunda Secundae.[55] Later, as a professor in Spain Vitoria defied university regulations at Salamanca by lecturing on the Summa theologiae rather than on Peter the Lombard's Sentences. When the university statutes of 1538 reaffirmed the Sentences, Vitoria tried to comment on both textbooks simultaneously but broke down from overwork. Thereafter he had the university's unofficial permission to base his lectures on Thomas alone.[56] In the Thomistic emphasis on the integrity of human nature and natural human communities Vitoria seems to have discovered a theological approximation of the Renaissance reaffirmation of man.

Nominalism constituted a third influence on Vitoria's thought. In both theology and arts courses in Paris he was under the tutelage of nominalist teachers, pupils of the Scottish theologian John Major. The nominalist influence was especially

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see Robert Justin Hennessey, The Mystery of Divine Grace according to Conrad Koellin, O. P. (Washington, D.C.: Dominican House of Studies, 1969), esp. pp. vii-xii, 1-7.

[55] Pereña, "Introducción," p. XII. For a description of the University of Paris during Vitoria's tenure there see Ricardo Garcia Villoslada, La universidad de Paris durante los estudios de Francisco de Vitoria, O. P. (1507-1522), Analecta Gregoriana, Vol. XVI (Rome: Gregorian University, 1938).

[56] Hamilton, Political Thought, p. 173.

apparent in Vitoria's methodology as a moralist: like the nominalists he subjected specific, concrete problems to thoroughgoing analysis.[57]

The Dominican missionary tradition also seems to have made an impact on Vitoria. Already in 1511 the Dominican friar Montesinos had protested Spanish treatment of the Indians in Hispaniola (Haiti). In a sermon preached the Sunday before Christmas he berated the Spanish settlers for their cruelty:

> Tell me, by what right or justice do you keep these Indians in such a cruel and horrible servitude? On what authority have you waged a detestable war against these people who dwelt quietly and peacefully on their own land? . . . Why do you keep them so oppressed and weary, not giving them enough to eat nor taking care of them in their illness? For with the excessive work you demand of them they fall ill and die, or rather you kill them with your desire to extract and acquire gold every day. And what care do you take that they should be instructed in religion? . . . Are these not men? Have they not rational souls? Are you not bound to love them as yourselves? . . . Be certain that, in such a state as this, you can no more be saved than the Moors or Turks.[58]

Montesinos and other Dominican missionaries repeatedly tried to moderate colonial policy, periodically sending reports of Spanish misconduct back to the home country.[59] It should be noted, however, that Dominican opinion concerning the Indians was not unanimous: in a written memorial to the Council of the Indies one Dominican missionary declared that the Indians were "beasts" (*bestias*).[60]

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[57] Ibid., p. 171; Pereña, "Introducción," XI-XII; cf. Beltrán de Heredia, "Personalidad," p. XXV. For a brief account of nominalist moral theology see Häring, Law of Christ, I, 14-15.

[58] Pedro Henriquez-Urena, Literary Currents in Hispanic America, pp. 15-16; quoted by Hanke, Spanish Struggle, p. 17.

[59] Hanke, Spanish Struggle, pp. 17-21, 27-28, 58-59; James Brown Scott, The Spanish Origin of International Law, Vol. I: Francisco de Vitoria and His Law of Nations (Oxford: Clarendon Press, 1934), p. 78; Reginaldo di Agostino Iannarone, "Genesis del pensamiento colonial en Francisco de Vitoria," in Vitoria,

Vitoria's two-part work on war clearly reflected both his socio-political context and the various components of his intellectual background. In *De Indis* and *De jure belli*[61] he treated the contemporary wars of Spain in scholastic but humane fashion. His sources included the Old and New Testaments; the

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Relectio de Indies, pp. XXXI-XXXII. Getino lists sixty-four Dominican missionaries who had studied at the Dominican College of Saint Esteban in Salamanca (*El maestro*, p. 541). For a comprehensive survey of the missionary reaction to Spanish colonial policy see Joseph Höffner, *Christentum und Meschenwürde: das Anliegen der spanischen Kolonialethik im goldenen Zeitalter* (Trier: Paulinus-Verlag, 1947), esp. pp. 145-182.

[60] Hanke, *Spanish Struggle*, p. 12. On his deathbed the Dominican missionary, Domingo de Betanzos, retracted this view.

[61] Francisco de Vitoria, *De Indis et de iure belli relectiones*, ed. by Ernest Nys and trans. by John Bawley Pate, Classics of International Law (Washington, D.C.: Carnegie Institution of Washington, 1917). Except in cases where the translation is my own, all citations of these two *relectiones* are taken from this edition. In succeeding footnotes *De jure belli* and *De Indis* are abbreviated DJB and DI, respectively; the numbers following the abbreviations refer to paragraphs in the case of DJB, and section and paragraph in the case of DI (e.g., DJB, 2; DI, I, 3).

According to Beltrán de Heredia, the *relectio* was a unique literary genre employed in the universities of Bologna, southern France, and Salamanca. Briefly explained, the *relectio* was an annual address given by the professor at the conclusion of a course. In the *relectio* the professor returned to some aspect of the material covered in the course, subjecting it to more extensive and systematic analysis. A comparison of Vitoria's lectures on war (*Commentary* on ST, II-II, question 40) and his *relectiones* on the same topic illustrates precisely the relation of course-work to *relectio* ("Personalidad," pp. XXII-XXV).

XUM

theologians Augustine, Thomas Aquinas, and Cajetan; the civil and canon laws; and a variety of civil and canon lawyers including Hostiensis, Innocent IV, Sylvester of Priero, Antoninus, Bartolus of Sassoferato, and Nicolaus de Tudeschi.[62]

This major discussion of war explicitly mentioned three wars in which Vitoria's country was currently involved. By implication it referred to a fourth. Already in the mid-1530's Vitoria expressed concern about the wars fought among European Christians, especially the extended, bitter conflict between Spain and France. In his Commentary on Thomas Aquinas' question on war he chose most of his illustrations from this fratricidal inter-Christian war.[63] Vitoria's underlying concern was that the French-Spanish struggle served only to weaken the Church against heretics, presumably Protestants, and the infidel Moslems. In a letter written about 1536 he exclaimed:

> Let honest men say whether our wars promote the well-being of Spain, France, Italy, or Germany; or whether such wars tend to destroy all of these nations, and to swell the number of Moors and heretics.[64]

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[62] Vitoria, De Indis et de iure belli (Classics of International Law [CIL] ed.), "Index of Authors Cited," pp. 473-475.

[63] This commentary was presented in Vitoria's lectures of 1534-1537 in Salamanca and carefully copied down by one of his students, Francisco Triger. Since Vitoria spoke slowly in his lectures to allow students to take notes, sometimes even dictating, Triger's notes are regarded as a reliable source. The twentieth-century edition of Vitoria's commentary based on Triger's Nachschrift is Francisco de Vitoria, Comentarios a la secunda secundae de Santo Tomás, ed. by Vicente Beltrán de Heredia, Biblioteca de teologos españoles, Vols. II-VI, XVII (6 vols.; Salamanca, 1932-1952); cf. Hamilton, Political Thought, p. 172, n. 1.

[64] Translated by Gwladys L. Williams in Scott, Spanish Origin, p. 84. According to Beltrán de Heredia this is one of the few letters of Vitoria which have survived ("Personalidad," p. XXVIII).

Three years later the two *relectiones* on war gave voice to a passionate plea for moderation in the relations among Christian nations.

In his major work on war Vitoria said nothing further about the war against heretics. However, the Spanish war against the Moslems was very much on his mind. Despite the fact that Moorish power in Spain had been crushed, Vitoria clearly believed that still other Moslem territories belonged by right to Christendom. In lectures given during the academic year 1535-1536 he stated:

> There are other unbelievers who, even if they are not *de facto* subjects--for example, since they never were Christians--nevertheless are subjects *de jure* because they occupy the lands of Christians. Such unbelievers include the Turks who are in the whole of Greece, and the African Saracens who occupy lands of Christians which Christian princes previously possessed.[65]

In other passages of his lectures and in his major work on war Vitoria often returned to the Christian-Moslem theme, sometimes complaining bitterly about the severe damage inflicted by Moslems against Christians.[66]

Only rather late in life did Vitoria turn his attention to the Spanish conquests in the New World. Although his first teaching position was in Valladolid, seat of the Council of the

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[65] *Comentarios*, ST, II-II, 66, 8, 6 (III, 345; author's translation). From this passage one might infer that the fall of Constantinople was more vivid in Vitoria's memory than the loss of the Holy Land.

[66] DJB, 42; cf. *Comentarios*, ST, II-II, 40, 1, 12 and 18 (III, 284, 287); 62, 1, 28 (III, 81-82).

Indies, he seems not to have treated the Indian question in his early lectures. During the mid-1530's, however, one sees scattered traces of Vitoria's interest in the Indians. In a letter dated November 8, 1534, he wrote to a Dominican superior that mention of events in the Indies, especially in Peru, "makes my blood run cold."[67] The following year Vitoria gave a relectio entitled "On the Obligation to Be Converted When One First Attains the Use of Reason." Basing his address on Thomas Aquinas' discussion of unbelief,[68] Vitoria sought to determine what, if anything, pagan barbarians were bound to believe in order to be saved.[69] Later in 1535 Vitoria's lectures occasionally touched on the Indians, even mentioning them by name.[70]

The year 1536 seems to have constituted a watershed in Vitoria's thinking and writing about the Indians. One modern author attributes this change to a first-hand report which Vitoria received from a former pupil, Vicente Valverde. Valverde had accompanied Pizarro to Peru and had participated rather enthusiastically in his campaign against the Incas. Back in Spain for a short period, he seems to have given his former teacher a detailed account of the Peruvian conquest.[71] Whatever the reason, in the years 1537-1539 Vitoria's discussion of the Spanish conquest was much more direct and pointed. In 1537 or 1538 he announced a relectio inoffensively entitled "On Temperance." What the title concealed, however, was a stinging attack on many of the theoretical foundations for Spanish colonialism. Frightened by the uproar his address had made, Vitoria carefully withdrew and destroyed all copies of the relectio.[72] A year or two later Vitoria produced and delivered his major work on the Indian question, the two relectiones "On the Indians" and "On the Law of War." While conceding that, in theory at least, there were some grounds upon which Spain might wage war on the Indians, he forthrightly criticized many of the grounds alleged by the conquistadores as well as their lack of moderation in the use of means.

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[67] Excerpts of the letter are translated by Gwladys L. Williams in Scott, Spanish Origin, pp. 78-82.

[68] ST, II-II, 10.

[69] Beltrán de Heredia, "Personalidad," p. XXV.

[70] Comentarios, ST, II-II, 60, 5, 4 (III, 53); II-II, 62, 1, 28 (III, 81-82).

[71] Höffner, Christentum und Menschenwürde, pp. 190-191.

Despite his critical views Vitoria seems to have retained influence in Spanish public life. Twice in 1539 and twice in 1541 the Emperor, Charles V, informed or consulted him concerning Indian affairs. In 1545 the Emperor authorized his son, Prince Philip, to invite Vitoria to attend the Council of Trent.[73] The impact of Vitoria's students was also felt throughout the Spanish Empire. It is estimated that 5,000 students passed through his lecture-rooms. Many became bishops in Spain and America or professors at the universities of Salamanca, Alcalá, Santiago, Rome, Coimbra, Paris, Lima, and Mexico.[74] One of his pupils, Domingo de Salazar, labored as a missionary in Mexico and the Philippines, gaining fame in both Spanish colonies as a spokesman and defender of the aborigines.[75]

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[72] Beltrán de Heredia, "Personalidad," p. XXVI. Fortunately for posterity Vitoria sent a copy of the manuscript to his trusted friend, Miguel de Arcos, who preserved it. An edition of the relectio appears in Francisco de Vitoria, Relectio de Indis, pp. 100-116.

[73] Hamilton, Political Thought, p. 175.

Suárez

The life of Francisco Suárez can be periodized as follows: (1) birth and youth in Granada, 1548-1561; (2) studies in canon law at the University of Salamanca, 1561-1564; (3) entrance into the Jesuit Order, 1564; (4) studies in philosophy and theology at Salamanca, 1564-1570; (5) teaching positions at various Jesuit colleges in Spain, 1571-1580; (6) teaching position at the Jesuit College in Rome, 1580-1585; (7) teaching positions at the Spanish universities of Alcalá and Salamanca, 1585-1597; (8) teaching position at the University of Coimbra in Portugal, 1597-1616; and (9) retirement and death in Lisbon, 1617.[76]

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[74] Pereña, "Introducción," p. XX; Hamilton, Political Thought, p. 175; Getino, El maestro, 258-259.

[75] Hanke, Spanish Struggle, 158-161; cf. p. 152.

[76] Josef Soder, "Franz Suárez und sein Werk," in Francisco Suárez, Ausgewählte Texte zum Völkerrecht, trans. and ed. by Josef De Vries, Die Klassiker des Völkerrechts, Vol. IV (Tübingen: J. C. B. Mohr [Paul Siebeck], 1965), pp. 1-6; Hamilton, Political Thought, pp. 184-188; Joseph H. Fichter, Man of Spain: Francis Suarez (New York: Macmillan Company, 1940). There is no modern critical biography of Suárez. Among older works the most satisfactory by far is Raoul de Scorraille, François Suarez de la Compagnie de Jésus (2 vols.; Paris: P. Lethielleux, 1912-1913). Soder reports that Eleuterio Elorduy, the "most important

The socio-political context in which Suárez lived and worked received its stamp especially from the two Spanish kings who reigned during his lifetime, Philip II (1556-1598) and Philip III (1598-1621). Philip II considered himself to be simultaneously the promotor of Spanish national influence and the savior of Roman Catholicism. The Reformation historian Grimm provides a striking vignette of the Spanish monarch:

> Philip II was by character, education, and experience well suited to the role of a monarch of Spain and a champion of Catholicism. He was personally devout, ascetically inclined, impressed by the traditions of his dynasty and Catholicism, and as fully determined to enforce his will as his father [Emperor Charles V] had been. Discarding the feudal display still loved by his father, he preferred to spend many hours on his knees before the images and relics of saints or before the altar. He was also highly appreciative of the culture which the church was using to regain the allegiance of the people. He played no small part in promoting the brilliance of Spain's "golden age," which set the standards for much of Europe.[77]

In the service of Spain and the Roman Catholic Church Philip undertook to suppress heresy and spread the orthodox faith both at home and abroad. On the domestic front Philip unleashed the Inquisition to stamp out the remnants of Protestantism in Spain. In 1567 he sent the Duke of Alva into the Spanish Netherlands to put down the rebellion of his heretical subjects. A year later the crusade against the apostate Moors of Granada

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contemporary Suárez-scholar," is preparing a new biography as well as a three-volume edition of Suárez's letters ("Franz Suárez," pp. 1, 6-7).

[77] _Reformation Era_, pp. 419-420.

was launched.[78]

Abroad, Philip II lent his aid to Venice and the Pope in their efforts to destroy Turkish naval domination in the Mediterranean. At approximately the same time the Philippine Islands were conquered, converted, and named after the Spanish monarch. In 1580 Philip annexed Portugal on the basis of a dubious claim to succession. Thus strengthened, he turned his attention to rolling back the Reformation in France and England. Beginning about 1585, he intervened on the Catholic side in the French wars of religion.[79] It was England, however, which Philip viewed as "the greatest enemy of Christianity and Spain."[80] His military efforts against mildly-reformed Elizabethan England climaxed in the disastrous attack of the Spanish Armada in 1588.[81]

If Philip II used Catholicism in the service of Spanish national interest, his successor Philip III used his position as Spanish monarch to support the Roman Papacy.[82] In the words of Pereña Vicente,

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[78] Ibid., pp. 423, 435, 424.

[79] Ibid., pp. 424, 453; Latourette, Expansion, III, 307-309; cf. Hanke, Spanish Struggle, pp. 143-146, 158-161.

[80] Luciano Pereña Vicente, Teoría de la guerra en Francisco Suárez (2 vols.; Madrid: Consejo Superior de Investigaciones Cientificas, 1954), I, 68. Hereafter cited as Pereña Vicente, La guerra. The entire first volume of Pereña Vicente's work is a brilliant attempt to root Suárez's thought concerning war in the contemporary Spanish socio-political context.

[81] Grimm, Reformation Era, pp. 425-427, 472-474. Pereña Vicente also notes that Philip II formulated a project for the conquest and conversion of China (La guerra, I, 28). The project was never realized.

[82] Pereña Vicente, La guerra, I, 108.

> Philip III was the Prince, faithful to the Supreme Pontiff; the Prince, submissive to the Curia of Rome and the true right arm of the Holy See.[83]

At Philip's own request Pope Clement VIII authorized him to wage war not only against Moslem Turks and Saracens but also "against infidels and heretics, schismatics and enemies of the catholic faith."[84] Philip III did, in fact, continue the naval war against England and the struggle to suppress Dutch heretics. In the years 1606-1607 he intervened on behalf of the Papacy in its dispute with the Republic of Venice.[85] Several years later he supported the Catholic claimant to the throne of France.[86]

During the reigns of both kings Suárez was in close contact with the Spanish Crown. Philip II repeatedly asked Suárez's opinion on domestic- and foreign-policy matters. For example, he requested Suárez's advice on the legality of his annexation of Portugal.[87] In the 1590's Philip II manifested his concern for newly-annexed Portugal by appointing Suárez prima professor of theology at Portugal's most important university, the University of Coimbra.[88] After Philip II's death, Suárez became the close friend of Philip III's all-powerful foreign minister, the Duke of Lerma.[89] Pereña Vicente also speaks of Suárez's "extraordinary influence in the Court (Corte) of Philip III, at which he assisted in matters of state."[90] In the opinion of the same author, it was at the royal Court that Suárez "perceived the bases for the construction of [Philip III's] imperial policy and the concept of war as an indispensable instrument" of that policy.[91]

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[83] Ibid., I, 109 (author's translation).

[84] Ibid. (author's translation).

[85] Ibid., I, 110-112; Grimm, Reformation Era, 444, 474.

[86] Grimm, Reformation Era, 502.

[87] Soder, "Franz Suárez," p. 11; cf. Scorraille, François Suarez, II, 237-239, 250-251. Scorraille also lists numerous other specific topics on which Suárez gave his expert opinion. He notes that the editors of Suárez's posthumous works hoped to publish a collection of his policy-papers; however, the plan was not carried through and the collection was subsequently scattered (Scorraille, ibid.). Soder reports that part of the lost collection was re-discovered in the Lisbon Library and

One can also point to several intellectual influences which perhaps had an impact on Suárez's thought about war. The ancient family of Suárez had played an important role in the Reconquista of Spain. Francisco's paternal grandfather, Alfonso, had distinguished himself in the campaign to expell the Moors

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has recently been published under the Portuguese title Conselhos e pareceres (Acta universitatis Conimbrigensis [2 vols.: Coimbra, Portugal: University of Coimbra, 1948-1952]; Soder, ibid.).

[88] Soder, ibid., p. 3.

[89] Ibid., p. 5.

[90] La guerra, I, 114 (author's translation). In 1606 Suárez wrote a letter to King Philip III, urging him to side with the Papacy against Venice in a Church-state dispute (see n. 85 above). The text of Suárez's letter appears in Conselhos e pareceres, I, 127-131. For a general survey of the role of theologians as supporters and political advisors of Spanish royalty see Pereña Vicente, ibid., pp. 68, 73, 81, 94, 219-220.

[91] Pereña Vicente, La guerra, I, 114 (author's translation).

from Granada. After the successful termination of the war, the grandfather had received the estate of an expellee, Mohammed Abenadid, as a reward for outstanding service. Not long afterward, Alfonso sold the family's lands in Toledo and moved to Granada, where he became treasurer-general of the army and general superintendent of the emperor's palace in the Alhambra. Francisco Suárez was no doubt well aware of his family's role in recapturing Spain for Christianity and of the fact that his home had once belonged to the Moors.[92]

From the period of his university training one can detect additional currents of thought which influenced Suárez. Although he did not finish his studies in canon law, Suárez brought the casuistry and precision of a lawyer to his later discussions of war. In addition, he was well acquainted with the canonistic literature on the problem of war. The Jesuit Order also left its mark on Suárez, both in his role as political advisor and in his emphasis on the political power of the Pope.[93] There was also a direct linear influence of Vitoria on Suárez. One of his theology professors at Salamanca, Juan Manicio, was a pupil of Vitoria and "was able to impress Suárez with the first achievements of the Thomistic revival begun by the Dominicans."[94]

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[92] Hamilton, Political Thought, p. 184; Reijo Wilenius, The Social and Political Theory of Francisco Suárez, Acta Philosophica Fennica, Vol. XV (Helsinki: Societas Philosophica Fennica, 1963), p. 18. In one of his expert opinions Suárez revealed a keen awareness of the Reconquista, referring with approval to the "[Spanish] kings, who with their blood and that of their vassals won these kingdoms from the Moors, who occupied them" ("Duuidas da juridicam real com a ecclesiastica," in Conselhos e pareceres, I, 112 [author's translation]).

[93] For a survey of Jesuit political theory see J. Neville Figgis, "On Some Political Theories of the Early Jesuits," Transactions of the Royal Historical Society, New Series, XI (1897), 89-112.

Finally, one can, in my view, point to a more diffuse and pervasive influence on Suárez's thought. The Council of Trent separated the careers of Vitoria and Suárez. In response to religious discord the Roman Catholic Church had become less tolerant of doctrinal deviation and more vigorous in its suppression of dissent--a posture especially evident in Spain where the Inquisition was unleashed, reform-movements were quashed, and desperate schemes for cancelling fifty years of European history were concocted. As a scholar, Suárez was repeatedly threatened by the categorical mentality of the period. In 1603 his book On Penance was interdicted by the Pope and he himself was excommunicated. If Suárez showed less sensitivity to the subjective feelings of Spain's enemies than had Vitoria, the difference can perhaps be traced in part to the spirit of his times.[95]

Suárez's major systematic discussion of war occurred in a lecture on the Secunda Secundae of Thomas Aquinas' Summa theologiae. During the academic year 1583-1584 Suárez discussed the theological virtue of love, devoting one treatise of his discussion to the topic "On War" (De bello).[96] With meticulous care he applied his casuistic method to the materials found in the Summa theologiae, II-II, questions 40-42. The entire discussion covers sixty-six pages in the standard English translation. Of these, fifty-four are devoted to Thomas' question on war (question 40).[97]

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[94] Wilenius, Social and Political Theory, p. 19. In later years Mancio defended Suárez against the attacks of some of his fellow-Dominicans (ibid.).

[95] Regout, La doctrine, p. 201; Wilenius, Social and Political Theory, pp. 15-16, 19-21.

In this major work on war Suárez referred explicitly to Philip II's suppression of the Moors in Granada, Spanish policy with reference to the Indians, and the Christians' war against the Moslem Saracens.[98] In the opinion of Pereña Vicente, Chapter VI of Suárez's treatise constituted a brief in defense of Philip II's annexation of Portugal.[99] Implicitly, Suárez also approved the Spanish campaign against the rebellion in the Netherlands.[100] His most-used sources in the treatise on war included the Old and New Testaments, the theologians Augustine, Thomas Aquinas, Cajetan, Vitoria, John Major, De Soto, and Sepúlveda; the canon and civil laws; and the canonists or summists Antoninus of Florence, Sylvester of Priero, Covarruvias, and Navarrus.[101]

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[96] Soder, "Franz Suárez," p. 9; Pereña Vicente, La guerra, I, 30.

[97] Francisco Suárez, Selections from Three Works, trans. by Gwladys L. Williams, Classics of International Law (2 vols.; Oxford: Clarendon Press, 1944), II, 800-865. The treatment of question 40 appears on pp. 800-854. Citations from the treatise De bello will appear in the following form: DB, section number, paragraph number (e.g., DB, I, 4).

[98] DB, VII, 13; V, 5; VII, 12.

[99] La guerra, I, 241.

[100] DB, VII, 13 (reference to Ayala); cf. Pereña Vicente, La guerra, I, 123.

A second work is tangentially significant as a source for Suárez's views on war. In 1610, at the request of the papal nuncio in Madrid, Suárez began writing an extended attack on the views of King James I of England. The central point at issue was James' demand that English Catholics swear an oath of loyalty to him. In his attack, entitled A Defense of the Catholic and Apostolic Faith, Suárez repeatedly depicted King James I as the Antichrist.[102] Near the conclusion of his work Suárez included some not-so-veiled threats about the Pope's right to depose a heretical king and to authorize the invasion of his kingdom by orthodox princes.[103]

Gentili

Alberico Gentili's life was divided almost equally between Italy and England. The most important events and periods of his lifetime can be summarized as follows: (1) birth and youth in San Ginesio, Italy, 1552-1569; (2) studies for a doctorate in law at the University of Perugia, 1569-1572; (3) employment as a praetor and municipal lawyer in Ascoli and San Ginesio, Italy, 1572-1579; (4) flight to Austria, accompanied by his father, to escape the Inquisition, 1579; (5) arrival in London,

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[101] Suárez, Selections (CIL ed.), "Index of Authors Cited," II, 869-890.

[102] Pereña Vicente, La guerra, I, 138-139.

[103] Suárez, Defensio fidei, VI, 4, 19, in Selections (CIL trans., p. 722).

1580; (6) position as a tutor in civil law at Oxford, 1581-1586; (7) trip to Saxony to seek a German professorship, 1586; (8) position as Regius Professor of Civil Law at Oxford, 1587-1608; (9) position as Spanish advocate in the English Admiralty Court, 1605-1608; and (10) death in London, 1608.[104]

Since Suárez and Gentili were contemporaries, they were witnesses to roughly the same events on the European political scene. However, they approached contemporary affairs from somewhat divergent angles of vision. This difference in viewpoint is perhaps understandable when one reflects on the fact that Suárez became a professor of theology in Rome just one year after Gentili had been hounded from his Italian homeland by the Inquisition. It is also understandable when one considers that Gentili and Suárez were men of influence in England and Spain during a period of almost constant Anglo-Spanish conflict.

To be more specific, the wars of religion in France, the Spanish annexation of Portugal, the Dutch war for independence from Spain, the naval warfare between Spain and England, and the constant threat of a Roman Catholic restoration in England--all these were important aspects of Gentili's socio-political context. However, in each case the policy of Gentili's English sovereign was diametrically opposed to the foreign policy of Spain.

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[104] Thomas Erskine Holland, "Alberico Gentili," in Studies in International Law (Oxford: Clarendon Press, 1898), pp. 1-19; Van der Molen, Alberico Gentili, pp. 35-60. Holland helped to revive interest in Gentili; Miss Van der Molen's biography is perhaps the most comprehensive and satisfactory study of any just-war theorist or international lawyer.

It was perhaps Robert Devereux, the second earl of Essex, who best epitomized Elizabethan foreign policy. In 1585-1586 he accompanied his stepfather to the Netherlands where he aided the Dutch in their war against the Spaniards. When the Spanish Armada attacked England in 1588, Devereux was general of the cavalry gathered on the shore at Tilbury to ward off the anticipated Spanish invasion. Three years later Queen Elizabeth sent him to France to aid Henry IV in his war against the Spanish, Catholic party. In 1596 Devereux served as one of the commanders in the English naval expedition which seized and sacked the chief Spanish seaport, Cádiz.[105]

Several intellectual influences also seem to have played a major role in Gentili's thought about war. Gentili's father, Matteo, was a medical doctor, a man of broad cultural interests, and a Protestant. In San Ginesio, Matteo served as Alberico's first tutor, instructing him in many branches of learning and teaching him the classical languages, Latin and Greek. At the University of Perugia Gentili received an excellent education in the Roman civil law--an education which employed the venerable methodology of the university's ancient masters, Bartolus and Baldus.[106] A third influence on Gentili was Protestantism, to which his father had certainly introduced him but which seems to

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[105] Richard Bruce Wernham, "Essex, Robert Devereux," Encyclopaedia Britannica, 1969, VIII, 717; Oman, Sixteenth Century, pp. 513-514.

[106] Van der Molen, Alberico Gentili, p. 37.

XUM

have become for him a matter of intense personal conviction. In a theological tract penned shortly after his arrival in England Gentili depicted the papacy as the Antichrist and revealed a deep sympathy for the Protestant Reformation, particularly the Calvinist tradition.[107] In England he and his wife first joined the church of the French Protestant refugees. Later Gentili and his family became members of the Anglican Church.[108] Finally, it seems clear that prevailing English public opinion, particularly the views of the Crown, exerted an influence on Gentili's thought. Specifically, Gentili's harsh estimate of Spain moderated considerably between 1588 and 1605; this moderation was not unrelated to a new English foreign policy toward Spain, instituted in 1604 by King James I.[109] Similarly, Gentili's views on the right of revolution gradually diverged from the Calvinist tradition and at least approached the more absolutistic conception of royal power advocated by King James.[110]

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[107] Ibid., pp. 245-251. Gentili's work was entitled "Concerning the Antichrist, the Roman Papacy." According to Van der Molen, after the departure of Gentili and his father and brother from Italy the Holy Inquisition sentenced the exiles, in their absence, to penal servitude for life and confiscation of their possessions (Alberico Gentili, p. 42).

[108] Van der Molen, Alberico Gentili, p. 323, n. 332.

[109] Ibid., p. 58; Holland, "Alberico Gentili," pp. 12-13.

[110] Van der Molen, Alberico Gentili, pp. 230-240; for the political theory of King James I, see George H. Sabine, A History of Political Theory (3rd ed.; London: George G. Harrap & Co., 1963), pp. 395-397. The book in which Gentili articulated his more absolutistic views was dedicated to King James I by Robert Gentili, Alberico's son (Van der Molen, Alberico Gentili, p. 58).

Gentili's major work on war was entitled On the Law of War[111] and was first published in complete form in 1598. However, the idea for the book had germinated ten years earlier, while Gentili was preparing a lecture for the graduation-exercises of one of his students. In a letter written to a friend a few days before the lecture he excitedly announced his proposal:

> On that evening you will have from me a treatise on the law of war, and you will hear about the causes for undertaking war, about the rules (*rationibus*) for waging war, and about the law of the victors and vanquished.[112]

Gentili's tripartite scheme foreshadowed precisely the three major divisions, or books, of the complete work. In the same letter Gentili also indicated that he expected several specific issues to be discussed at the graduation exercises, among them

> Whether a war can be just on both sides; whether the law of embassy remains in effect in wars involving civilians;[113] whether the subject of a prince whose religion is different from his own

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[111] Alberico Gentili, *De jure belli libri tres*, trans. by John C. Rolfe, Classics of International Law (2 vols.; Oxford: Clarendon Press, 1933). Citations from the English translation in the second volume will be made in the following form: author, title, book, chapter, page; e.g., Gentili, DJB, I, 1 (p. 3).

[112] Alberico Gentili to Jo. Benetto, June 30, 1588; text printed in Holland, "Alberico Gentili," Appendix, No. IV, pp. 29-30. The passage cited here appears on p. 29 (author's translation).

[113] Gentili seems to refer to a revolutionary conspiracy in which a foreign ambassador is involved. Four years earlier the Spanish ambassador, Mendoza, had been accused of being connected with a conspiracy to liberate Mary, Queen of Scots, and to dethrone Elizabeth. Gentili had been called on for a legal judgment on the case and had argued that the criminal immunity of ambassadors covered such a case (Van der Molen, *Alberico Gentili*, p. 49).

> ought to participate in war against a prince of his own religion; that is, whether a papist [Roman Catholic] justly fights against the Pope and for his own prince, the Queen.[114]

It seems quite clear that the immediate context of Gentili's letter and lecture was the imminent attack of the Spanish Armada.[115]

Gentili's July lecture was published later in 1588 under the title On the Law of War: First Commentary. The "Second" and "Third" commentaries were published within the following year. During the years 1589 to 1598 Gentili gradually expanded the three brief commentaries into the three extended books of On the Law of War. The complete work, which appeared in 1598, contained five times as much material as the original commentaries.[116]

In this major work on war Gentili drew upon a wide variety of sources. Not surprisingly he cited the Roman civil law rather frequently, referring to it more than 450 times in a 414-page work.[117] Among commentators on the civil law, the venerable Italian Baldus was most frequently quoted (about 275 times), but Gentili also employed the more recent scholarship of Italian jurists like Alciatus and French jurists like Hotman and Cujas. By comparison with the civil law, the canon law was only infrequently cited, and canonists like Innocent IV, Nicolaus de Tudeschi, and Covarruvias were mentioned even less often. Gentili's references to the Old and New Testaments were frequent and revealed a thorough knowledge of the Scriptures. Among the theologians, Gentili's favorite by a wide margin was Augustine, but he also referred quite often to Tertullian, Ambrose, Thomas Aquinas, and Vitoria. In two respects Gentili diverged radically from the previous just-war tradition in his pattern of citation. From antiquity he introduced a veritable flood of classical quotations and examples, drawing especially on Euripides, Plato, Aristotle, Cicero, Livy, Tacitus, Plutarch, Philo, and Seneca.[118] From modern times Gentili cited the views of recent historians, like Guiccardini and Paolo Giovio, and recent political theorists, like Machiavelli and Bodin.

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[114] Gentili to Benetto; cited by Holland, "Alberico Gentili," p. 30 (author's translation).

[115] Van der Molen, Alberico Gentili, p. 53. Miss Van der Molen seems to indicate that Gentili's lecture followed the attack of the Armada, whereas in fact the lecture in early July preceded the Armada's arrival off England by several weeks. Gentili's lecture was published several months after the decisive battle with the Armada (Holland, "Alberico Gentili," Appendix, No. VIII, p. 33).

[116] Van der Molen, Alberico Gentili, pp. 53-54. The 1598 edition was re-issued in a second and third edition at Hannover in 1604 and 1612, but there were no substantive changes in the two later editions. Modern editions and translations of DJB are generally based on the 1612 edition.

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[117] These and the following statistics have been gleaned from the "Index of Authors Cited" in the CIL translation, pp. 437-459. There are 414 pages of text in this translation.

[118] While preparing his work On the Law of War Gentili produced two historical studies on the wars of the Romans, the first on their injustice in war, the second on their justice in war (Van der Molen, Alberico Gentili, p. 54). These two studies were undoubtedly a rich source for the classical allusions of On the Law of War. Gentili's interest in classical learning was perhaps ultimately traceable to the influence of his father.

XUM

If Suárez's thought about war reflected an atmosphere of Roman Catholic militancy, Gentili's major work on war betrayed a rather pronounced fear of Spain. In the first book of On the Law of War Gentili expressed grave concern about the European balance of power:

> Is not this even to-day our problem, that one man may not have supreme power and that all Europe may not submit to the domination of a single man? Unless there is something which can resist Spain, Europe will surely fall. 'Just as, if any one should pluck out the keystone of an arch, on which all the stones lean, the rest would follow and fall with it' (Ausonius, Eclogae).
>
> No one's sovereignty must ever on any account be allowed to grow so great, that it is not permitted to call in question even his manifest injustice.[119]

Not content to express his fear of Spain in general terms, Gentili specifically criticized Spanish policy toward the Indians[120] and Philip II's treachery in dealing with infidels and heretics.[121] Like Queen Elizabeth, he questioned Philip's annexation of Portugal.[122] And he explicitly approved the Queen's policy of aiding the Netherlands in its war for independence from Spain.[123] If further proof of Gentili's basic foreign-policy posture is needed, he dedicated On the Law of War to Robert Devereux, his personal friend, godfather and namesake of his eldest son, and fearless campaigner against Spain in the Netherlands, at home, in France, and at Cádiz.[124]

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[119] DJB, I, 14 (p. 65). In the same context Gentili spoke of opposing injustice on two fronts, namely, against the Spaniards and against the Turks. His concern about the Turks was probably traceable to his study of the Roman civil law or his early residence in Mediterranean Italy or both. The Turks did not constitute a serious threat to England during the late sixteenth century. In fact, England was carrying on a lucrative trade in weapons with the Ottoman Empire, much to the chagrin of Roman Catholic Spain and Austria (V. J. Parry, "The Ottoman Empire, 1566-1617," New Cambridge Modern History, III, 367-370).

[120] DJB, I, 19 (p. 89); III, 8 (p. 325).

[121] Ibid., I, 8 (pp. 36-37).

[122] Ibid., I, 3 (p. 16); Pereña Vicente, La guerra, I, 82.

In his study of Suárez's just-war theory, the twentieth-century Spanish scholar Pereña Vicente devotes brief attention to Gentili's thought about war. In the following passage he characterizes Gentili's work On the Law of War and advances a thesis concerning the relationship between Gentili and his Spanish contemporary, Suárez.

> It has been said that all of sixteenth-century politics was present in the treatise of Alberico Gentili.[a] All the political happenings of the age found in his work their justification and critique. . . . The work of the Italian attempted to serve as a justification for English policy. Thus two theories and two men stood over against one another. Suárez was the theorist of Spanish policy.[125]

The above discussion of Gentili's life and work tends to corroborate Pereña Vicente's characterization of Gentili's treatise. His thesis concerning the relationship between Gentili and

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[123] DJB, I, 16 (pp. 76-77); II, 2 (p. 140).

[124] DJB, Dedication (CIL trans., p. iii); Van der Molen, Alberico Gentili, pp. 53-55; cf. n. 105 above. Gentili was also a close friend of Sir Philip Sidney who was killed in battle supporting the Dutch in their war against Spain. A year after Sidney's death Gentili remembered his deceased friend in the dedication of a book (Van der Molen, ibid., pp. 50-51).

[125] La guerra, I, 30 (author's translation); cf. ibid., I, 67. Footnote a refers to Ernest Nys, Les origines du droit international (Brussels-Paris, 1894), p. 132.

Suárez can be accepted as a provisional hypothesis. The hypothesis will be tested in the next chapter of this dissertation.

Grotius

Like Gentili, Grotius divided his lifetime between two countries, spending the first half of his adult years in Holland and the latter half as an exile in France.[126] The most important events and periods of his life were the following: (1) birth and youth in Delft, 1583-1594; (2) studies in philology, history, law, and theology at the University of Leyden, 1594-1597; (3) achievement of the doctorate in law at the University of Orleans in France, 1598; (4) private law practice in the Hague, 1599-1607; (5) public office as Attorney General (Advokaet Fiscael) of the province of Holland, 1607-1613; (6) public office as Pensionary of Rotterdam in the States-Assembly of Holland, 1613-1618; (7) membership in the executive body of Holland, the Committee of Councillors, 1617-1618; (8) trial and imprisonment for the alleged crime of treason, 1618-1621; (9) escape from prison hidden in a book-chest, 1621; (10) life and writing as an exile in Paris, 1621-1631; (11) several months' return to Holland, 1631-1632; (12) exile in Hamburg, Germany, 1632-1634; (13) service as Swedish Ambassador to France, 1634-1645; (14) recall to Sweden and death in Rostock, Germany, 1645.[127]

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[126] Grotius' years of adulthood are counted from age 11, when he began university training.

[127] Data gathered from the three modern biographies of Grotius: Hamilton Vreeland, Hugo Grotius: The Father of the Modern Science of International Law (New York: Oxford University

Since Grotius was a partial contemporary of Suárez and Gentili, he shared with them, during his youth, the same European socio-political situation. The wars of religion in France, the English-Spanish naval war, and the Dutch war for independence from Spain were all elements of his socio-political context. In addition, during Grotius' youth, the Dutch East India Company was deeply involved in disputes with the Portuguese over trading rights in the Indies.[128] Quite understandably, the political interests of the Netherlands were somewhat different from those of England and almost diametrically opposed to those of Spain and its dependency, Portugal.

Press, 1917); Knight, Life; and W. J. M. Van Eysinga, Hugo Grotius: eine biographische Skizze, trans. by Frau Plemp Van Duiveland (Basel: Benno Schwabe & Co., 1952). Knight is highly critical of Grotius; Vreeland is an uncritical apologist. Van Eysinga's brief work employs new materials and is the most balanced and reliable of the three. Cornelis Van Vollenhoven had hoped to present the fruit of twenty years' research in a full-length biography of Grotius, but an untimely death frustrated his project. The only recent book on Grotius in English is Edward Dumbauld, The Life and Legal Writing of Hugo Grotius (Norman, Oklahoma: University of Oklahoma Press, 1969). Dumbauld provides good bibliographies, a brief sketch of Grotius' life, and short discussions of five legal works.

In addition to these secondary works, Grotius' extensive correspondence is a valuable source of information concerning his life and thought. The Grotius Institute at the Hague is currently publishing the first complete edition of this correspondence. In 1969 the seventh large volume of this edition appeared, concluding with letters from the year 1636. The last nine years of Grotius' correspondence have yet to be edited (Hugo Grotius, Briefwisseling, ed. by P. C. Molhuysen and B. L. Meulenbroek, Rijks Geschiedkundige Publicatiën, Nos. 64, 82, 105, 113, 119, 124, and 130 (7 vols.; 'S-Gravenhage: Martinus Nijhoff, 1928-).

[128] Wallbank, Taylor, and Bailkey, Civilization, I, 565. For Van Vollenhoven's brief sketch of Grotius' socio-political context about 1600, see "Grotius and Geneva," pp. 5-6.

On the domestic European scene there was a brief period of relative peace from about 1605 to about 1620. The United Provinces of the Netherlands, freed by a truce from the external Spanish military threat, entered a period of internal religious and political strife. Beginning as a theological dispute between orthodox Calvinists and Remonstrants, or Arminians, the conflict soon took on political overtones. The two predominantly Arminian provinces, Holland and Utrecht, advocated pluralism in religious faith and de-centralization in government. Maurice of Nassau, who had led the United Provinces in the struggle against Spain, favored both a national synod to establish religious unity and a more centralized, monarchical form of government. By 1619 the Synod of Dort had established orthodox Calvinism as the official religion of the Netherlands, and Maurice ruled the United Provinces with undisputed authority.[129]

About 1620, when both Suárez and Gentili had died and when Grotius was approaching the age of forty, the brief era of relative peace gave way to renewed warfare. Between 1620 and 1650 European nations participated in numerous internal or bilateral disputes: the later religious wars in France; the continuation of the Dutch-Spanish struggle; Anglo-Dutch disputes over trade in the East Indies; the Puritan revolution in England; and the battles of Poland and later of Venice against the Ottoman Turks.[130] But the major conflagration of the era was the multilateral conflict called the Thirty Years' War.

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[129] Grimm, Reformation Era, pp. 538-541.

Having begun as a local war between Protestants and Catholics, the Thirty Years' War gradually increased in scope and altered in character. In 1630 Scandanavia entered the conflict in the person of Gustavus Adolphus and his well-trained, modern Swedish army. By 1635 it was quite clear that the war was being waged more for political than for religious reasons. Lutheran Sweden allied with Roman Catholic France to curb the expansion of the Roman Catholic House of Hapsburg. The ecumenical Franco-Swedish alliance was supported by the Calvinist Netherlands and opposed by Roman Catholic Spain as well as by the Austrian Hapsburgs.[131] Most of the actual fighting in the war was done on German soil, where many towns and cities were devastated and the population was reduced by more than one third within a thirty-year period.[132] In the late 1630's several peace-moves were initiated, but the war dragged on until 1648, when the Treaty of Westphalia was agreed upon by the nations of Europe. Despite active papal opposition to some provisions of the Treaty, the European

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[130] Ibid., pp. 530-531; ibid., pp. 512, 522; Harbison, "Europe and Asia," pp. 650-652; Grimm, Reformation Era, pp. 562-565; Parry, "Ottoman Empire," pp. 596-597, 630-639.

[131] Grimm, Reformation Era, pp. 520-521; Van Eysinga, Hugo Grotius, pp. 104-105.

[132] Wedgwood, Thirty Years War, pp. 511-513, 516.

XUM

nations honored it and maintained the peace.[133]

Grotius' socio-political context has been sketched in some detail because of his especially intimate relationship to aspects of that context. As we have noted, the other three later theorists often functioned as political advisors. Grotius, however, actually held public office and functioned as a statesman at two points in his career. Between 1607 and 1618 he was a provincial official in Holland. During the period of the Franco-Swedish alliance in the Thirty Years' War he served as a link between the allies in his role as Swedish Ambassador to France. As a public official Grotius, perhaps more than any of the other just-war theorists, was in a position to shape, as well as respond to, contemporary political events.

It is somewhat difficult to isolate specific intellectual influences on Grotius' thought about war because his reading and interests were so universal. Nevertheless certain dominant factors can be detected. Like Vitoria, Grotius was deeply influenced by humanism. He particularly admired his fellow-countryman Erasmus, whom he termed "the light of Holland."[134] Grotius' biographer Van Eysinga speaks of his "deep and outspoken respect for Erasmus," noting that when Grotius briefly returned to Rotterdam in 1631, he immediately paid a visit to the city's newly-erected memorial to Erasmus.[135]

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[133] Grimm, Reformation Era, pp. 522-524. For Van Vollenhoven's brief sketch of Grotius' socio-political context about 1625, see "Grotius and Geneva," p. 11.

[134] Van Eysinga, Hugo Grotius, pp. 28-29.

Humanism, the scholarly interests of his father and uncle, and his university training combined to awaken in Grotius an intense interest in classical culture. Asked in 1615 for advice on organizing a course of study, Grotius recommended the use of Aristotle's works on physics, metaphysics, and moral philosophy; the works of Plato and Cicero on laws; Livy's history; Euripides' tragedies; Terence's comedies; and various works of Horace, Plutarch, and Seneca.[136]

The Christian faith was also an important formative influence in the life of Grotius. Legend has it that at the age of twelve he convinced his mother to convert from Catholicism to Protestantism.[137] Better attested is the fact that while at Leyden Grotius lived and studied with the French Protestant theologian and university professor, Franciscus Junius. Van Eysinga attributes Grotius' "pious but undogmatic Christian faith" chiefly to the influence of Junius.[138] A more precise characterization of his religious convictions might be "ecumenical Protestantism." His personal views were closest to those of Dutch Arminianism, but he constantly sought ways to unite the various traditions with Protestantism;

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[135] Ibid., pp. 24, 95.

[136] Vreeland, Hugo Grotius, p. 67; cf. ibid., pp. 7-9.

[137] Van Eysinga, Hugo Grotius, p. 9.

[138] Ibid., p. 11.

late in life he also advanced proposals designed to lessen the distance between Catholics and Protestants.[139] Grotius based his hopes for the unity and pacification of Christendom primarily on the enlightened policies of Christian princes. Although he favored a strong state role in religious affairs, even accepting the Anglican model of church-state relations, he was nevertheless a vigorous advocate of toleration for religious minorities.[140] In his views about the non-Christian religions Grotius was also quite tolerant for his day. Influenced by the English Deist, Herbert of Cherbury, he accepted the view that a few "common notions" were to be found in all the religions of mankind. He argued that pagans could be held accountable for rejecting the common nations of natural religion, which were easily accessible to them; but he strenuously denied that pagans were obliged to accept the more obscure and difficult doctrines affirmed by the Christian religion.[141]

The Western legal tradition also exerted a strong influence on Grotius. He was deeply impressed by the natural-law theories of Thomas Aquinas and Suárez.[142] He was also well acquainted with the civil and canon laws, the major commentators on both branches of the law, and the more recent works of Vasquez, Hotman, and Gentili on the law of nations. After his years of experience as a lawyer and public servant in Holland Grotius was sufficiently familiar with Dutch civil law to write the first comprehensive textbook on the subject.[143]

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[139] Van Eysinga, Hugo Grotius, pp. 52, 55, 58, 59, 61, 62, 66-67, 98; Vreeland, Hugo Grotius, chap. 4; Knight, Life, pp. 125-135, 138, 143, 271-272, 277-278.

[140] Knight, Life, p. 272; Dumbauld, Life and Legal Writings, p. 15; Van Eysinga, Hugo Grotius, pp. 55, 58-61, 64.

[141] Van Eysinga, Hugo Grotius, p. 82. Grotius' views on the religious responsibilities of pagans are more fully documented in the next chapter.

[142] Vreeland, Hugo Grotius, p. 67; J. Kosters, "Les fondements du droit des gens," Bibliotheca Visseriana, IV (1925),

In contrast to Vitoria, Suárez, and Gentili, Grotius wrote *two* major works on war: the first was a youthful treatise which, except for one brief chapter, remained unpublished during his lifetime; the second was the mature, published work for which he is usually remembered. Since the two books reflect Grotius' thought about war at two different stages of his career, and since they are in many respects complementary works, both are employed in the present study.

The youthful treatise, composed by Grotius between 1604 and 1606, was entitled *On the Law of Prize*.[144] The work was

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41-47. The continuity of Grotius with the medieval natural-law tradition is accepted by Leo Strauss ("On the Basis of Hobbes's Political Philosophy," in *What Is Political Philosophy? and Other Studies* [Glencoe, Ill.: Free Press, 1959], pp. 174-175). This continuity has been most recently documented in the dissertation of Charles Schaar Edwards ("The Law of Nature, the Law of Nations and the Law of War in the Thought of Hugo Grotius" [unpublished Ph.D. dissertation, Princeton University, 1969]).

[143] Vreeland, *Hugo Grotius*, pp. 67, 128; Van Eysinga, *Hugo Grotius*, p. 24; for a survey of Grotius' legal writings which reflects his general competence in the field of law see Dumbauld, *Life and Legal Writings*.

[144] Hugo Grotius, *De jure praedae commentarius*, trans. by Gwladys L. Williams and Walter H. Zeydel, Classics of International Law (2 vols.; Oxford: Clarendon Press, 1950). Citations from the English translation given in the first volume will be made in the

occasioned by a complex chain of events in the East Indies and Holland. About the turn of the century Dutch traders sought to establish commercial relations with the East Indies. The Portuguese, who had colonies in the East Indies and had previously enjoyed a monoply on trade in the area, used both treachery and military force in their efforts to exclude the Dutch. For their part, the Dutch traders organized themselves into a private corporation, the Dutch East India Company, and insisted on the "freedom of the seas." In 1604 a Dutch admiral, annoyed at continuing harassment by the Portuguese, captured a richly-laden Portuguese trading-vessel, the Catharina, claiming it as a prize. When his decisive action was upheld by the Dutch College of Admiralty, the captured booty was sold, the profits being distributed between the admiral and the Company.[145]

The admiral's seizure had serious political repercussions in Holland. Orthodox Calvinists generally approved the capture, but some shareholders of the East India Company refused to accept their part of the profits, giving them instead to the poor. Other shareholders, especially the Mennonites and a pacifistic group of Remonstrants, sold their shares and retired from the

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following form: title, chapter number, page number; e.g., JPr, XIII (p. 309). Grotius' unpublished early work was lost for several centuries and was first re-discovered, edited, and published late in the nineteenth century (Dumbauld, Life and Legal Writings, pp. 23-24).

[145] Robert Fruin, "An Unpublished Work of Hugo Grotius's," Bibliotheca Visseriana, V (1925), 8-32.

Company, arguing that it had ceased functioning as a commercial enterprise and had become, instead, a warring power.

> Among the grave Mennonites who did not want to enrich themselves with the booty-money was the chief of a great commercial house at Amsterdam, Pieter Lijntgens. He had invested more than a ton of gold in the Company, but now that it took to privateering he sold his shares like others of his persuasion. Not content, however, with retiring from the Company as the others and to give up profit for the sake of conscience, he made a plan to found a new company for exclusively peaceable trade with the Indies, of which he was to be one of the directors.[146]

Faced with such defections and the prospect of a commercial rival, the Dutch East India Company quickly retained the twenty-one-year-old Grotius to justify the practice of capturing enemy goods. In his role as a kind of "public relations counselor"[147] Grotius sought to demonstrate, on the one hand, that the seizure of the Portuguese vessel was justified because of previous crimes of the Portuguese, and on the other, that the New Testament and Christian ethical standards did not prohibit such justifiable military action. His brief for the East India Company was entitled On the Law of Prize.[148]

A subsidiary theme in Grotius' early work was the justice of the Netherlands' struggle for independence from Spain. Noting that Philip II had annexed Portugal some years earlier, Grotius drew a clear parallel between Portuguese mistreatment of Dutch traders in the Indies and Spanish cruelty to the Dutch in the Netherlands. In his view the Dutch-Spanish war was a contest between a venerable, independent nation, the Netherlands, and a conditionally-appointed ruler who had violated the terms of his contract with that nation.[149]

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[146] Ibid., pp. 33-34 (one comma added).

[147] Dumb[illegible]uld, Life and Legal Writings, p. 25.

[148] Ibid., pp. 25-28; Fruin, "Unpublished Work," pp. 35-46; Van Eysinga, Hugo Grotius, pp. 24-25. That Grotius' work was directed at least in part against pacifist objections is evident from the first three questions which he treated: (1) "Is any war just?" (2) "Is any war just for Christians?" (3) "Is any war just for Christians, against Christians?" (JPr, III [p. 31]).

In the historical sections of On the Law of Prize Grotius drew heavily on primary-source materials, like ships' diaries.[150] The systematic sections, however, referred to a wide variety of Western intellectual traditions. His chief authorities from classical times were Plato, Aristotle, Cicero, Plutarch, and Seneca. Grotius also cited the Bible frequently, particularly the Old Testament. Among the theologians, Augustine, Thomas Aquinas, Cajetan, and Vitoria predominated. Grotius also referred frequently to the Western legal tradition, citing the civil and the canon laws as well as commentators on both:

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[149] JPr, XI (pp. 168-170); XIII (pp. 286-298). Additional evidence of Grotius' Dutch nationalism can be found in a number of his early works: in several poems Grotius praised Dutch cities for their courage in withstanding Spanish attacks (Vreeland, Hugo Grotius, pp. 10, 32); the poem "Pontifex Romanus" included a monolog by Philip II of Spain in which the king rehearsed his plans for world domination (Van Eysinga, Hugo Grotius, pp. 21-22); two youthful historical works recounted in detail the valiant struggle of the Dutch against the Spaniards: Annales et historiae de rebus Belgicis and De antiquitate reipublicae Batavicae (Van Eysinga, ibid., pp. 22-23, 45); another historical work, Parallelon rerumpublicarum, compared the customs and character of the Athenians, Romans, and Dutch, demonstrating the superiority of his countrymen in virtually every respect (Van Eysinga, ibid., pp. 27-28).

[150] Van Eysinga, ibid., p. 23.

Innocent IV, Bartolus, Baldus, Nicolaus de Tudeschi, Sylvester of Priero, Covarruvias, and Gentili.[151]

About sixteen years after the completion of his first major work on war Grotius began intensive research on the second. Three years later, in 1625, the first edition of On the Law of War and Peace was published.[152] Although the later work derived its overall structure and much systematic material from the earlier treatise,[153] it was significantly different in length, method, and tone. The mature work was more than twice as long as the youthful work.[154] Whereas Grotius had specifically mentioned Dutch-Portuguese and Dutch-Spanish conflicts in the earlier treatise, in the later work he programatically avoided all reference to contemporary political affairs.

> If any one thinks that I have had in view any controversies of our own times, either those that have arisen or those which can be foreseen as likely to arise, he will do me an injustice. With all truthfulness I aver that, just as mathematicians treat their figures as abstracted from bodies, so in treating law I have withdrawn my mind from every particular fact.[155]

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[151] Data gathered from "Index of Authors Cited" in Grotius, De jure praedae (CIL ed.), I, 397-412.

[152] Hugo Grotius, De jure belli ac pacis libri tres, Vol. II: The Translation, trans. by Francis W. Kelsey, et al., Classics of International Law (Oxford: Clarendon Press, 1925). Citations of this translation will be given in the following form: title, book, chapter, paragraph, number (e.g., JBP, III, 1, 4, 1).

[153] On this point see Fruin, "Unpublished Work," pp. 55-59.

[154] The number of pages in the CIL translations of JPr and DJB is 366 and 807, respectively.

[155] JBP, Prolegomena, 58.

There was also a marked difference in the tone of Grotius' two major works. In the early treatise Grotius stressed freedom, in the later work, order. Fruin traces this diversity of emphasis to psychological and experiential factors:

> When he wrote the Jus praedae he felt himself a citizen of a republic which had freed itself by a rebellion; when he composed the Jus belli he felt himself a regent banished in consequence of a rising against the legitimate government.[156]

There was also a striking difference in Grotius' general attitude toward war in 1604-1606 and 1622-25. During the earlier period the Netherlands seemed to him to be beset on every hand by enemies; by 1625 the Thirty Years' War had already been raging seven years. Fruin characterizes Grotius' response to these differing circumstances in the following terms:

> The fire of youth had been tempered by experience; enthusiasm had been replaced by caution. Jus praedae was written to justify war in the Indies; Jus belli ac pacis . . . had to serve the purpose of bridling the desire of princes to wage war. As our author grew older he desired peace more. In later years he regretted that he had ever sung of war and expressed a wish that he might yet be able to destroy all his war poetry, "ista belli incitamenta."[157]

The index of Grotius' sources for On the Law of War and Peace reads like a resumé of Western intellectual history. In preparation for his second major work Grotius seems to have scoured Western philosophical, religious, historical, and legal literature in search of references to war. Fortunately, in the

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[156] "Unpublished Work," p. 59.

[157] *Ibid.*; the words in quotation marks are from Rivetiani apologetici discussio, written within the last year of Grotius' life.

"Prolegomena" to his work Grotius himself included a general classification and assessment of his sources. Among the philosophers he accorded first place to Aristotle but insisted on the necessity of appropriating truth from other philosophical sects as well. To history, particularly Greek and Roman history, Grotius accorded the role of providing "illustrations and judgements." He did not accord great weight to the views of poets and orators but included reference to them for the purpose of rhetorical "embellishment."[158]

Turning to religious sources, Grotius insisted on the importance of the Old Testament as a source of the law of nature but urged that a careful distinction be maintained between the natural law and extraordinary divine commands. He viewed the "Hebrew writers," e.g., Philo, Josephus, and Maimonides, as important contributors to the proper understanding of the Old Testament.[159] Unlike many of his predecessors, Grotius distinguished the New Testament rather sharply from the law of nature,

> considering it as certain that in that most holy law a greater degree of moral perfection is enjoined upon us than the law of nature alone and by itself, would require.[160]

In his employment of the New Testament as a moral guide he promised to indicate clearly "the things that are recommended to us rather than enjoined."[161]

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[158] JBP, Prolegomena, 42, 46, 47.

[159] Ibid., 48, 49. The examples of Jewish writers are my own, taken from the "Index of Authors Cited," JBP (CIL trans.), pp. 910, 913, 917-918.

[160] JBP, Prol., 50.

Grotius regarded the "authentic synodical canons" and the customs of Christians as important supplementary materials.[162] In his assessment of Christian theologians he revealed a viewpoint at once Protestant and humanistic. His perspective on the pre-scholastic theologians was that

> Their authority is the greater the more there are of them in agreement, and as we approach nearer to the times of pristine purity, when neither desire for domination nor any conspiracy of interests had as yet been able to corrupt the primitive truth.[163]

As for the Schoolmen, Grotius regretted that "their lot was cast in an unhappy age, which was ignorant of the liberal arts"; but he also noted that because of the critical acumen of the scholastics, any consensus among them on a moral issue was of great significance.[164]

Finally, Grotius turned to the Western secular legal tradition. He acknowledged a debt to the Roman civil law for its theoretical and practical discussions of the law of nature and the law of nations. In his view the thirteenth- and fourteenth-century commentaries on civil law were of somewhat limited usefulness since their authors had paid no heed "to the divine law or ancient history." Modern jurists who had combined jurisprudence with the study of classical literature, history, or politics were in Grotius' view even less useful.[165]

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[161] Ibid.

[162] Ibid., 51. The former category presumably included Gratian's Decretum and the Decretals of Gregory IX; cf. "Index of Authors Cited," JBP (CIL trans.), p. 900.

[163] JBP, Prol., 51.

[164] Ibid.

In his bibliographical essay Grotius mentioned by name several earlier students of the law of war. Among the theologians, he referred specifically to Erasmus, Vitoria, Henry of Gorychum, and Guillaume Mathiae. Lawyers mentioned by name included: Accursius, Bartolus, Legnano, Martin da Lodi, Lupus, Arias, Covarruvias, Ayala, Hotman, and Gentili.[166]

Since Grotius' On the Law of War and Peace was self-consciously a return to the past and an escape to the realm of abstraction, it provided no clear data concerning his attitude toward the wars of his own day. The earlier treatise On the Law of Prize, finished in 1606, had unambiguously revealed Grotius' assessment of the Dutch-Portuguese and Dutch-Spanish conflicts. But there was no explicit evidence in Grotius' two major works on war to indicate how he viewed the European conflicts fought between 1606 and 1645.

This great gap can be filled, in my view, if one takes into account supplementary evidence from Grotius' life, other works, and correspondence. In the cases to be cited Grotius did not explicitly apply his just-war theory. Rather, these instances are test-cases which show how the author of two major works on war did in fact assess particular seventeenth-century wars. They are, as it were, cameos of Grotius the theoretician of just war acting or forming a practical judgment in conformity with his conception of justice.

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[165] JBP, Prol., 53, 54, 55, 57.

[166] Ibid., Prol., 29, 37, 38, 53, 55.

As noted above, Grotius was a provincial official in Holland during the internal conflict of the Netherlands between 1610 and 1619. In the course of the dispute Grotius repeatedly functioned as an advocate of Holland's position, insisting on Holland's independent status as a republic, its privilege of tolerating internal religious pluralism, and its right to maintain its own militia. Prince Maurice of Naussau, on the other hand, stressed the unity of Holland with other provinces in the United Provinces, deplored the heterodoxy of the Arminians, and ordered the disarmament of the provincial militias. In the showdown between the two viewpoints Grotius was on the verge of advocating armed resistance but did not do so. Instead, he accepted the disbanding of the provincial militias in Holland and sympathetic Utrecht in the hope of achieving a negotiated settlement. Immediately thereafter he and his colleagues were arrested, tried by the Estates-General of the United Provinces, and convicted of high treason. Grotius' friend and colleague, Van Oldenbarnevelt, chief executive officer of the Province of Holland, was sentenced to death and beheaded. Grotius, second in command, was sentenced to life imprisonment and the confiscation of all property.[167] In a long Apology written after his escape from prison, Grotius defended the policies of Holland and his own role in the dispute. He clearly regarded Maurice's action as an unjustified and illegal war against the independent republic of Holland and its lawful sovereigns.[168]

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[167] Dumbauld, Life and Legal Writings, pp. 89-92; Vreeland, Hugo Grotius, pp. 85-120; Van Eysinga, Hugo Grotius, pp. 63-73.

Grotius' attitude toward the French wars of religion can also be determined with some precision. In fact, in this case one must speak of two attitudes, one pre-exilic and one post-exilic. In a poem written about 1600 and in a historical work written between 1601 and 1612 Grotius deplored the Massacre of St. Bartholomew and seemed, in general, sympathetic to the cause of the Huguenots.[169] During the 1620's the Huguenots and the French monarchy again found themselves in conflict. Reversing his previous position, Grotius now regarded the war of the Huguenots as an unjust rebellion against legitimate authority.[170] One or more changes in historical circumstances no doubt influenced Grotius' judgment. First, the King of France, Louis XIII, was his benefactor and protector in exile. In fact, Grotius dedicated his work On the Law of War and Peace to the French king.[171] Second, in the Netherlands Grotius had suffered greatly and in his view unjustly at the hands of Calvinists; during his exile in France he refused to worship with the French Calvinists, or Huguenots, even though he was a Protestant. It is thus quite possible that personal animus toward the religion of his persecutors played a role in his judgment.[172] Third, and perhaps most important, by the Edict of Nantes in 1598, the French Huguenots had been granted civil rights and religious toleration. In Grotius' view, the fact that the Huguenots now enjoyed religious liberty deprived them of their major cause for waging war.[173] When he dedicated On the Law of War and Peace to King Louis XIII, he specifically praised the monarch for "offer[ing] no violence to souls that hold views different from your own in matters of religion."[174]

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[168] Dumbauld, Life and Legal Writings, pp. 89-117; Vreeland, Hugo Grotius, pp. 156-158; Van Eysinga, Hugo Grotius, pp. 85, 88-89. It should perhaps be noted that again in this case the description of the political situation was one of the major issues in dispute.

[169] Vreeland, Hugo Grotius, pp. 29-30. The historical work was entitled Annales et historiae de rebus Belgicis; the precise citation from this work will be given in the next chapter.

[170] Van Eysinga, Hugo Grotius, p. 84; cf. Grimm, Reformation Era, pp. 530-531.

The two previous test-cases of Grotius' thought on war were live issues before he finished writing his second major work on war. It is therefore quite possible that both cases were in his mind as he wrote. Two other conflicts postdated the first edition of On the Law of War and Peace. In the Puritan disputes with English royalty Grotius seems consistently to have supported James I and Charles I. Already in 1613, in an interview with King James I, he had compared the English Puritans with Dutch Calvinists, arguing that both sought to undermine established political authority.[175] During the late 1630's and early 1640's, when the contest between the Crown and the Puritans gradually developed into civil war, Grotius always stood on the side of King Charles I and Archbishop Laud.[176] It seems quite clear that he regarded the Puritan Revolution as an unjustified rebellion against the lawful government of England.

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[171] JBP, Dedication; Vreeland, Hugo Grotius, pp. 154-155.

[172] Van Eysinga, Hugo Grotius, pp. 83-84.

[173] Grimm, Reformation Era, pp. 456, 530-531.

[174] JBP, Dedication (CIL trans., p. 3); Van Eysinga, Hugo Grotius, pp. 84-85, 116.

But the major conflict which overshadowed the last ten years of Grotius' life was the Thirty Years' War. Again in this case it is possible to determine quite clearly how Grotius viewed the conflict. Sometime before his death, Gustavus Adolphus had given orders that Grotius should one day be employed in the service of Sweden. The king admired Grotius and had had On the Law of War and Peace translated into Swedish.[177] In 1634, two years after Gustavus' death, the necessary negotiations were carried out and Grotius was appointed Swedish Ambassador to France.

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[175] Van Eysinga, ibid., p. 55.

[176] Ibid., p. 112. Knight notes that in the years 1637-1638 Grotius made formal arrangements with King Charles I and Archbishop Laud for a post-ambassadorial retirement in England (Life, p. 273). According to the same author, the English Ambassador to France, Scudamore, reported to the Archbishop that

> "body and soul Grotius professeth himself to be for the Church of England, and gives this judgment of it, that it is the likeliest to last of any church this day in being"(Life, p. 271).

[177] Vreeland, Hugo Grotius, pp. 189-190; p. 189, n. 24.

The significance of Grotius' position is apparent when one considers that the years 1635 to 1648 constituted what is generally known as the "Franco-Swedish Period" of the Thirty Years' War.[178] Indeed, one of Grotius' first tasks was to assist in negotiating the agreement by which France entered the war as an ally of Sweden in support of Protestant Germany and versus the Hapsburgs and Spain.[179] Grotius was fully convinced of the justice of Sweden's cause and actively supported its war-effort.

> It would be a mistake to think that Grotius was reluctant in his first years [as ambassador] to promote the war. On the contrary, he was fully convinced of the legitimacy (Rechtmässigkeit) of the Swedish cause. The war had to be continued until the moment when work for peace could be undertaken with hope for success. Thus in the first years of his ambassadorship he served the Swedish war-policy with complete devotion.
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> . . . .
>
> He served the Swedish cause, which he held to be just, with all his might and with all the means which were, in his view, consistent with good faith.[180]

Grotius' concern to maintain ethical limitations on warfare became evident at several points during the war. Disagreements between Grotius and Cardinal Richelieu were frequent and sharp during the late 1630's. Already in their first meeting ten years earlier they had represented fundamentally-opposed conceptions of politics. A passage in one of Grotius' letters described a moment of that first encounter:

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[178] Grimm, Reformation Era, p. 521.

[179] Knight, Life, p. 238; Van Eysinga, Hugo Grotius, pp. 104-105; cf. Wedgwood, Thirty Years War, pp. 390-391.

[180] Van Eysinga, Hugo Grotius, pp. 106, 109 (author's translation).

> I have forgotten to report something that the Cardinal [Richelieu] said--something that did not please me. He said that in matters of state the weaker power is always in the wrong. I answered that God and history (die Zeit) always uncover the truth.[181]

Grotius was particularly suspicious of France's designs on German territory beyond the Rhine.[182] On two occasions Grotius was able to put into practice principles espoused in the means-discussion of On the Law of War and Peace. In 1639 he helped to negotiate the release of Charles Louis, Elector Palatine, whom Cardinal Richelieu had arrested and imprisoned. Three years later he arranged the exchange of two important prisoners: Weerts, a captured enemy general, was freed in exchange for the release of Marshal Horn, a leading general in the Swedish army.[183]

Despite his general desire for peace in Europe, Grotius opposed papal mediation as a means for ending the Thirty Years' War. In official letters to Oxenstiern, High Chancellor of Sweden,[184] he repeatedly expressed distrust of Pope Urban VIII's political aims and misgivings over holding a peace conference in the papally-dominated city of Köln. He was no doubt pleased when Sweden chose Osnabrück in Protestant Westphalia as the tentative site for a future peace conference.[185]

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[181] Quoted by Van Eysinga, ibid., p. 116 (author's translation); cf. ibid., p. 117.

[182] Van Eysinga, ibid., pp. 114, 120.

[183] Knight, Life, pp. 242-244.

[184] These weekly letters constitute a major source of information concerning Grotius' political views during the years 1634-1645. In the Briefwisseling only the letters of 1634-1636 are currently available, but a complete edition of Grotius' official letters appears in the edition of Oxenstiern's works and letters (Hugo Grotius, Epistolae ad Axelium Oxenstiernia, in Rikskansleren Axel Oxenstiernas Skrifter och Brefvexling, ed. by

From about 1640 on Grotius' central concern was the religious and military pacification of Europe--a central theme of On the Law of War and Peace. Between 1640 and 1645 he wrote a series of theological works calculated to moderate confessional hostility.[186] In 1641 he wrote to his brother Willem:

> I have with a burning desire throughout my whole life worked for peace in the Christian world.[187]

A year later Grotius explained why he was delaying his retirement from the Swedish ambassadorship:

> I love peace and quiet and would gladly devote the remainder of my life to the service of God and posterity. If I had not some hope of contributing to the General Peace, I should have retired before now.[188]

It was a severe disappointment to Grotius that in 1643 Sweden named three other persons to serve as peace-negotiators in

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Kongl. Vitterhets- Historie- och Antiqvitets-Akademien, Vols. II/2 and II/4 [2 vols.; Stockholm: P. A. Norstedt & Söners, 1889-1891]).

[185] Van Eysinga, Hugo Grotius, p. 111; Vreeland, Hugo Grotius, pp. 207-208.

[186] Van Eysinga, Hugo Grotius, pp. 126-130, 131-133; Knight, Life, pp. 277-284.

[187] Letter of September, 1641; cited by Dumbauld, Life and Legal Writings, p. 14, n. 22 (author's translation).

[188] Quoted by Vreeland, Hugo Grotius, p. 228 (italics omitted).

Osnabrück. To the very end of his ambassadorial service he nourished the hope that he might yet be allowed to take part in the negotiations. One of his last official acts in Paris was to request from Sweden the necessary passports and documents for the journey to Osnabrück.[189]

Literary Relations

The literary relations among the four later theorists can best be characterized as "the dialogue that never happened." A combination of delayed publication, religious intolerance, and political pressure prevented all but the most minimal kind of interchange.

Vitoria's two relectiones on war, given in 1539, were published first at Lyons in 1557, then at Salmanca in 1565.[190] Thus Suárez, lecturing in Rome in 1584, was able to draw upon Vitoria's major work on war in his own treatise "On War." Suárez did, in fact, borrow heavily from Vitoria, both in the general structure of his work and in terms of the specific questions discussed.[191] Although the Suarezian treatise "On War" was completed in 1584, its publication was delayed until 1621, or thirteen years after Gentili's death.[192] Thus Gentili was unable to use or criticize Suárez's major work on war in his own treatment of the subject.

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[189] Van Eysinga, Hugo Grotius, pp. 121-122.

[190] Beltrán de Heredia, "Personalidad," p. XXII.

[191] According to the "Index of Authors Cited" in the CIL translation of his works, Suárez explicitly cited Vitoria's relectio "On the Law of War" nine times in his treatise (Selections, p. 889).

[192] Soder, "Franz Suárez," p. 7.

The complete version of Gentili's On the Law of War was published in 1598; it included seven explicit references to Vitoria's relectiones on war.[193] Since Suárez lived until 1617, there would have been no chronological obstacle to his reading Gentili's major work on war. However, in 1603 all of Gentili's works were placed on the Roman Catholic Index of Prohibited Books.[194] Whether for this reason or some other, Suárez seems never to have cited Gentili's On the Law of War, not even in his Defense of the Faith against Gentili's king, a work composed between 1610 and 1613.[195] Thus the opportunity for a Suarezian critique of Gentili's views on war was missed.

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[193] Van der Molen, Alberico Gentili, p. 54; Gentili, DJB (CIL trans.), "Index of Authors Cited," p. 459.

[194] Index librorum prohibitorum . . . Benedicti XIV. (Rome: Rev. Camera Apostolica, 1758), p. 111. Pereña Vicente notes that the Inquisition "corrected" Gentili's work, purging all passages incompatible with Roman Catholic theology or critical of Spanish foreign policy (La guerra, I, p. 72, n. 125). However, he cites no documentary evidence for this statement. I am unable to reconcile the assertion with the prohibition of the Index, a ban which was initiated in 1603 and which remained in effect in 1758.

[195] Suárez, Selections (CIL trans.), "Index of Authors Cited," p. 879. Arthur Nussbaum was so impressed with the contradictions between Suárez and Gentili in their discussions of war that he once advanced the thesis that Suárez composed "On War" as a refutation of Gentili's On the Law of War. However, the chronology of the two works makes this relationship impossible (Nussbaum, Historia del derecho internacional, p. 74, n. 24; cited by Pereña Vicente, La guerra, I, 30).

Grotius borrowed liberally from Vitoria and Gentili in his two major works on war. In the "Prolegomena" of On the Law of War and Peace, he acknowledged his debt to both predecessors but also indicated deficiencies in their discussions of war.[196] Grotius' literary relationship to Suárez was somewhat more complicated, however. In the text of On the Law of War he cited four innocuous passages from Suárez's On Laws, but he did not mention Suárez by name in the "Prolegomena." At no point did he refer to Suárez's major work on war or to his Defense of the Faith.[197]

Grotius' failure to employ Suárez's "On War" may perhaps be be attributed to the above-mentioned delay in publication. If the Suarezian treatise of 1584 was published only in 1621, Grotius perhaps had no chance to read it before publishing On the Law of War and Peace in 1625. However, the late publication date does not explain why Grotius failed to employ Suárez's treatise in the subsequent revisions of his work, especially since "On War" was published in Paris, as well as at Lyons and Coimbra, in 1621.[198]

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[196] JBP, Prol., 37-38. Explicit citations of Vitoria's major work on war numbered 52 in JPr and 54 in JBP; the corresponding figures for Gentili were 10 in JPr and 7 in JBP (see the indices of the CIL translations). The major biographer of Gentili, Van der Molen, argues that Grotius' somewhat grudging recognition of Gentili's achievement did not adequately convey his immense indebtedness to his Anglo-Italian predecessor (Alberico Gentili, p. 243).

[197] Grotius, JBP (CIL trans.), "Index of Authors Cited," p. 925.

[198] For the 1621 editions of "On War" see Soder, "Franz

Two bits of evidence suggest that Grotius was well acquainted with Suárez's general philosophical position and with the work On Laws in particular. In an article published in 1925 Jan Kosters, a Dutch lawyer, reported discovering a handwritten note in the manuscript copy of Grotius' On the Law of Prize. In the note Grotius summarized Suárez's distinction between two kinds of jus gentium--a distinction which had appeared in Suárez's work On Laws, published in 1612. When he published On the Law of War and Peace in 1625, Grotius included the substance of Suárez's distinction in the "Prolegomena" but without citing Suárez.[199] A second fragment of evidence reveals Grotius' generally high estimate of Suárez's prowess as a philosopher. In 1633 he wrote to Canon John Cordesius:

> If I judge the matter rightly, Suárez is a man of such subtlety in Scholastic philosophy that scarcely any man is his equal.[200]

Suárez," p. 7. Van Vollenhoven notes Grotius' failure to cite Suárez's work:

> "Grotius apparently did not know Suárez's treatise De triplici [which included De bello] when he wrote liber II, caput 20, paragraph 40, number 4, of his book [JBP]. He doubtless would have added Suárez's name to the list of his opponents. He should have done so in the reprints of 1631 (1632), 1642, 1646" ("Grotius and Geneva," p. 23, n. 1).

[199] Kosters, "Les fondements," pp. 41-43; cf. James Brown Scott, "Introduction" to Suárez, Selections (CIL trans.), pp. 17a-21a. The distinction in question is found in JBP, Prol., 53.

[200] Letter of October 15, 1633, to J. Cordesius; cited by C. Van Vollenhoven, "The Growth of Grotius' De Iure Belli ac Pacis as It Appears from Contemporary Correspondence (revised text)," Bibliotheca Visseriana, VIII (1929), 146 (my translation). In addition, Grotius cited Suárez in De imperium summarum potestatum circa sacra, a work which he wrote between 1614 and 1616 but

One is therefore led to conclude that Grotius' almost total silence about Suárez in On the Law of War and Peace was deliberate. The reason for his reticence is not difficult to determine. Suárez's Defense of the Faith against King James I had so incensed the English monarch that in 1613 he had ordered the work to be burned in London by the public hangman. Not content to suppress the seditious book at home, James urged the kings of France and Spain likewise to ban Suárez's book.[201] In 1614 the Parlement of Paris did in fact condemn the Defense of the Faith:

> All things considered, the aforesaid Court has and does declare that the propositions and maxims contained in the aforementioned book are scandalous and seditious, tending to overthrow the State and to encourage the subjects of the sovereign kings and princes and others to attempts against their sacred persons.[202]

The book was burned publicly in the Palace Court; libraries, printers, and booksellers were forbidden to handle it; and all other persons were forbidden to buy or to own it.[203] There were substantive grounds for French hypersensitivity to Jesuit

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which was first published posthumously in 1647 (James St. Leger, The "Etiamsi Daremus" of Hugo Grotius: A Study in the Origins of International Law [Rome: Gregorian Pontifical University, 1962], p. 110).

[201] Fichter, Man of Spain, pp. 299-301; Hamilton, Political Thought, p. 188.

[202] Quoted by St. Leger, "Etiamsi Daremus," p. 107. For the complete Latin text of the Parlement's condemnation see Suárez, Conselhos e pareceres, II/2, 217-221.

[203] St. Leger, "Etiamsi Daremus," p. 107.

treatises recommending tyrannicide: four years earlier King Henry IV, Louis XIII's predecessor, had been assassinated by an insane Catholic fanatic.[204]

As noted above, Grotius dedicated On the Law of War and Peace to his protector, King Louis XIII of France. In view of the French ban on Suárez's Defense of the Faith and the fate of Louis XIII's royal predecessor, it would have been, to say the least, untactful for Grotius to give honorable mention to Suárez in his work.[205]

Two years after its initial publication in 1625 Grotius' On the Law of War and Peace itself was banned by the Roman Catholic Index "until corrected."[206] Two possible explanations for the prohibition have been advanced: the first is that Grotius' failure to add the popes' proper titles to their names offended the Inquisitors; a more recent suggestion is that Grotius' refusal to accept certain religious grounds for war, e.g., heresy, caused its prohibition.[207] In any case, the placing of Grotius' book on the Index completed the dialogue-stifling cycle of ban and counter-ban.

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[204] Grimm, Reformation Era, p. 458; Hamilton, Political Thought, p. 188.

[205] Scattered comments in one of Grotius' letters and in several minor works suggest that, in his own mind, Grotius distinguished between nefarious and exemplary Jesuits. At one point he noted that even the Order itself did not defend the views of Mariana and Santarelli. On the other hand, Grotius praised the character and erudition of Suárez and many French Jesuits (Letter of October 15, 1633, to J. Cordesius [Briefwisseling, V, 194]; Opera omnia theologica, ed. by Pieter de Groot [3 vols.; London: M. Pitt, 1679], III, 206, 658, 694, and 702).

[206] Index librorum prohibitorum, p. 117.

[207] Jesse Reeves, "The First Edition of Grotius' De Jure Belli ac Pacis, 1625," American Journal of International Law, XIX (1925), 21-22. According to Reeves, Grotius' work was removed from the Index by Pope Leo XIII in 1900.

The reciprocal intolerance of the early seventeenth century seriously affected the later development of the just-war tradition. Subsequent discussions of just war were carried on within two mutually-impervious disciplines, Roman Catholic moral theology and the predominantly-Protestant science of international law. To this day the breach remains, for the most part, unhealed.[208]

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[208] In his classic survey of the just-war tradition Regout devotes a two-sentence footnote to Gentili, a four-page appendix to Grotius, and an entire section to post-Grotian Catholic moral theologians; he completely ignores post-Grotian discussions of the just war by international lawyers (La doctrine, pp. 249, n. 2; 274-278; 279-297). The historical surveys of just-war theory written by Nussbaum and von Elbe, both international lawyers, completely ignore Catholic moral theology after Suárez but discuss a whole series of post-Grotian international lawyers (Nussbaum, "Just War--a Legal Concept?" pp. 453-479; von Elbe, "Evolution," pp. 665-688). For an account, as well as an example, of the role of confessional bias in historical studies of the major just-war theorists, see Nussbaum, Concise History, Appendix II: "James Brown Scott on the Superiority of the Spanish Scholastics over Hugo Grotius," pp. 296-306.

CHAPTER IV

THE FOUR THEORISTS' THOUGHT CONCERNING WAR

Like Thomas Aquinas, the four later theorists devoted primary attention to the whether, who, when, and how of permissible warfare. In fact, if one were to excise the theorists' discussions of these four basic questions from their major systematic works on war, he would be left with a few pages of definitions in Gentili and Grotius and a brief discussion of duels and sedition in Suárez.

Vitoria based the structure of his lecture "On the Law of War" on the four questions enumerated above.

1. "Whether it is lawful for Christians to wage war at all."
2. "Who has authority either to wage or to declare war?"
3. "What can and ought to be causes of just war?"
4. "What is lawful in a just war and how much may lawfully be done to the enemy?"[1]

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[1] DJB, prologue (author's translation). The other lecture in Vitoria's major work on war concentrated on the third question. For the convenience of the reader I normally quote the easily accessible translation of the Classics of International Law (CIL) Series. In all cases I cite the four authors' works according to the sub-divisions of the CIL Series (e.g., Vitoria, DJB, 22; Grotius, JBP, III, 1, 4, 1). However, in the case of Gentili's De jure belli and Grotius' De jure praedae, I also include the page number of the CIL translation, since the chapters of these works were not sub-divided by the authors or their editors. When the translation is my own or when the CIL translation is revised by comparison with the original Latin,

Although they did not divide their works into four parts corresponding to these four questions, Suárez and Grotius announced their outlines precisely in terms of whether, who, when, and how.

	Suárez		*Grotius*
1.	"Whether war is intrinsically evil."	1.	"Whether any war is just."
2.	"Who has the legitimate power of declaring war?"	2.	[Who may wage war?]
3.	"What is a just cause and title [for war]?"	3.	"All the causes for which war can originate."
4.	"What is the proper mode (*debitus modus*) for waging war?"[2]	4.	"What is lawful in war . . . and how much and by what modes (*quibus modis*)?"[3]

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the Latin text employed is in each case the modern critical edition rather than the Latin text printed in the CIL Series. The critical editions of the four authors' major works are: Francisco de Vitoria, *Obras de Francisco de Vitoria: relecciones teologicas*, ed. by Teofilo Urdanoz (Madrid: Biblioteca de autores cristianos, 1960); Francisco Suárez, *Texto crítico* [of *De bello*], Vol. II of *Teoría de la guerra en Francisco Suárez*, ed. by Luciano Pereña Vicente (2 vols.; Madrid: Consejo Superior de Investigaciones, 1954). Alberico Gentilis, *De iure belli*, ed. by Thomas Erskine Holland (Oxford: Clarendon Press, 1877); Hugo Grotius, *De iure belli ac pacis*, ed. by P. C. Molhuysen (Leyden: A. W. Sijthoff, 1919); Hugo Grotius, *De jure praedae commentarius*, ed. by H. G. Hamaker (The Hague: Martinus Nijhoff, 1868).

[2] DB, I, 7; titles of I, II, IV, and VII (author's translation). Suárez discussed the four questions in the following sections: whether (I); who (II-III); when (IV-VI); how (VII).

[3] JBP, Prol., 33-35; I, 2; III, 1, title and first paragraph (author's translation). After discussing definitions in his first chapter Grotius divided the remainder of his work as follows: whether (I, 2); who (I, 3-5); when (all of book II); how (all of book III).

In his earlier work *De jure praedae* Grotius had followed a similar outline. After two chapters devoted to introductory remarks and prolegomena he had asked *whether* war and the seizure of booty were just (chapters III and IV). His remaining systematic chapters (VI-IX) were outlined as follows:

This fourfold scheme was nowhere announced by Gentili. In fact, the three major divisions of *On the Law of War* were: "Beginning War Justly"; "Waging and Carrying on War Justly"; and "Ending War Justly."[4] However, a careful examination of his work reveals that within the first division Gentili discussed the whether, who, and when of permissible war. The remaining two divisions were devoted to the question of how.

1. "Whether (*si*) it is lawful to wage war."
2. "War is waged by sovereigns."
3. "The causes of war."
4. "Waging and . . . ending war justly."[5]

The fact that each theorist discussed the questions of whether, who, when, and how makes it possible to compare their works with some precision. Within each writer one can determine the relative amount of attention devoted to the four questions. Among the authors one can attempt to discern shifts of emphasis.

A comparison of the four writers in terms of the number

> "We must ascertain, first, what persons justly wage war; secondly, on what grounds and against whom they do so; thirdly, in what manner [*quomodo*]--that is to say, within what limits; and fourthly, to what end and with what intent [*animo*] this is done" (JPr, V; p. 59).

Grotius' categories in this early work closely parallel the categories employed above in the exposition of Thomas' thought.

[4] DJB, II, 1 (p. 131); III, 1 (p. 289).

[5] *Ibid.*, titles and first paragraphs of I, 5; I, 3; I, 7; II, 1; III, 1. Gentili devoted the following chapters to the discussion of the four basic questions: whether (I, 5); who (I, 3-4); when (I, 7-25); how (all of books II and III).

of pages devoted to each question reveals the following pattern of ratios:[6]

	Whether	Who	When	How
Vitoria	1	1	3	5
Suárez	1	2	4	3¼
Gentili	1	3	24	75
Grotius	1	2	4[7]	7

The above figures indicate, first, that all four theorists devoted significantly greater attention to the questions of when and how than to the other two questions. One can virtually foresee the basic twofold distinction of later international lawyers: _jus ad bellum_ (when) and _jus in bello_ (how). Indeed, Grotius himself spoke of the _jus . . . ad bella et in bellis_.[8]

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[6] In each case the ratios were derived from the number of pages in the CIL translations. Within each writer the size of both print and page of course remains constant. Comparison among the writers is possible because we are dealing with ratios and not with absolute numbers of pages. The absolute numbers for the four theorists, reading horizontally on the graph, are as follows: Vitoria: 2, 2¼, 6½, 11; Suárez: 5, 10½, 21, 17½; Gentili: 4, 12, 97, 301; Grotius: 40, 76, 151, 264. These figures do not include Vitoria's lecture "On the Indies," which was devoted almost exclusively to the when-question.

[7] This figure does not include the 276 pages in which Grotius discussed the law of peace in book II (pp. 186-461). This topic and material are an innovation in Grotius and are not strictly comparable with the materials of the other theorists, although Grotius included his discussion in the book concerning causes of war. His general point in the long section was that any serious violation of the law of peace was a ground for war (Van Vollenhoven, _The Framework of Grotius' Book De Iure Belli ac Pacis_, Verhandelingen der Koninklijke Akademie van Wetenschappen te Amsterdam, Afdeeling Letterkunde, Nieuwe Reeks, XXX: 4 [Amsterdam: N. V. Noord-Hollandsche Uitgeversmaatschappij, 1931], pp. 30, 41, 54, and especially 64 and 103). If one were to include this material in the calculation of the ratios, the above figure would be 11 instead of 4.

[8] JBP, Prol., 28.

Second, the figures indicate that the question of how war should be waged assumed a position of predominance, even in relation to the question of when. Vitoria and Gentili both devoted their primary attention to this question. With the qualification noted above,[9] Grotius did as well. This heavy emphasis on the how-question stood in marked contrast to Thomas' scattered and cursory remarks on the how of permissible war.

Whether

The four later theorists of just war were keenly aware that their views [illegible] shared by all ancient and contemporary thi[illegible]uinas, they were quite explicit in [illegible] from the pacifist tradition.

Vito[illegible] frankly acknowledged that some patristic [illegible] espouse pacifism. Tertullian was the centr[illegible] their attention, but Lactantius, Cyprian, and Origen also received mention.[10] If Thomas had failed to mention the apparent pacifism of the early Church, the later theorists rectified his omission.

But the four theorists were also aware that pacifism was not a dead relic of past centuries. Rather, it was in their

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[9] See n. 7 above.

[10] Vitoria, DJB, prologue; Gentili, DJB, I, 5 (pp. 27-28); Grotius, JBP, I, 2, 9, 2. What Gentili called "Gregory's Decree" was in fact a quotation from Origen (Gratian, Decretum, pt. II, C. 23, qu. 1, c. 1 [Friedberg ed., I, cols. 889-890, n. 22]).

Second, the figures indicate that the question of how war should be waged assumed a position of predominance, even in relation to the question of when. Vitoria and Gentili both devoted their primary attention to this question. With the qualification noted above,[9] Grotius did as well. This heavy emphasis on the how-question stood in marked contrast to Thomas' scattered and cursory remarks on the how of permissible war.

Whether

The four later theorists of just war were keenly aware that their views on war were not shared by all ancient and contemporary thinkers. Unlike Thomas Aquinas, they were quite explicit in identifying their opponents from the pacifist tradition.

Vitoria, Gentili, and Grotius frankly acknowledged that some patristic writers had seemed to espouse pacifism. Tertullian was the central focus of their attention, but Lactantius, Cyprian, and Origen also received mention.[10] If Thomas had failed to mention the apparent pacifism of the early Church, the later theorists rectified his omission.

But the four theorists were also aware that pacifism was not a dead relic of past centuries. Rather, it was in their view a present menace to sound morals and the security of Christian Europe. Ironically, Luther was attacked as a pacifist. In his Explanations of the Ninety-Five Theses (1518) he had advanced a rather startling thesis:

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[9] See n. 7 above.

[10] Vitoria, DJB, prologue; Gentili, DJB, I, 5 (pp. 27-28); Grotius, JBP, I, 2, 9, 2. What Gentili called "Gregory's Decree" was in fact a quotation from Origen (Gratian, Decretum, pt. II, C. 23, qu. 1, c. 1 [Friedberg ed., I, cols. 889-890, n. 22]).

> To fight against the Turks is just like resisting God, who punishes our sins with such a rod.[11]

The Catholic theologians and the Protestant lawyer Gentili were equally vehement in their responses to Luther. Vitoria complained that

> Luther, who left naught uncontaminated, denies that Christians may take up arms against the Turks, and he relies not only on the above-cited texts of Scripture [Romans 12:19; Matthew 5:39; Matthew 26:52], but also on the fact that if the Turks attack Christendom it is the will of God.[12]

Suárez accused Luther of espousing a faulty doctrine of predestination:

> The statement of Luther that it is not lawful to resist the punishment of God is indeed ridiculous; for God does not will the evils [against which war is waged,] but merely permits them; and therefore He does not forbid that they should be justly repelled.[13]

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[11] In his On War Against the Turk, published in 1529, Luther admitted to having expressed this view in 1518 but argued that the European situation had changed significantly during the intervening years (Werke, ed. by J. K. F. Knaake, et al., [91 vols.; Weimar: H. Böhlau, 1883-], I, 30², 108).

[12] DJB, prologue. Vitoria added a jibe at the militarism of the Germans:

> "Herein, however, he has not as much success as in his other dogmas in imposing on the Germans, who are born soldiers" (ibid.).

[13] DB, I, 5. The words in brackets are in the CIL translation.

And Gentili angrily warned theologians not to exceed their sphere of competence.

> We constantly have a legitimate reason for war against the Turks. We ought not to break with them; no! We ought not to make war upon them when they are quiet and keeping the peace, and have no designs upon us; no! But when do the Turks act thus? Let the theologians keep silence about a matter which is outside of their province.[14]

Erasmus' quasi-pacifistic views were scrutinized by several theorists. Grotius was quite respectful of "my fellow-countryman Erasmus," arguing that the Dutch humanist had rhetorically overstated the case for peace.[15] If Suárez referred only vaguely to the error of persons who assert that war is forbidden to Christians, his friends and fellow-Jesuits were more explicit: Bellarmine and Gregory of Valencia named Erasmus as a perpetrator of the misconception.[16] Gentili was openly scornful of what he regarded as Erasmus' ambivalence concerning war:

> Some cite Erasmus in our favour, others on the opposite side. Perhaps a third view will be nearer the truth, that the flighty dilettante did not know what he thought.[17]

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[14] DJB, I, 12 (p. 57); cf. Van der Molen, Alberico Gentili, p. 125. Grotius also believed that Christians had an obligation to unite against the Moslem "enemies of Christianity" (JBP, II, 15, 12). The "claustrophobia of Christendom" which we noted in the thirteenth century (see above, Chap. I, n. 16) extended into the sixteenth.

[15] JBP, Prol., 29.

[16] Bellarmine, Disputationes de controversiis Christianae fidei, De membris ecclesiae, Bk. III: De laicis, chap. 14; Gregory of Valencia, Commentariorum Theologicorum Tomus Tertius, XVI: De bello, punct. 1. The latter volume was not accessible to me; the reference is from Pereña Vicente, La guerra, I, 135.

[17] DJB, I, 5 (p. 29).

Pacifistic reform movements within the Church also attracted the attention of the later just-war theorists. Suárez complained that Wycliffe had followed the belief of the ancient Manichaens.[18] His friends Bellarmine and Gregory of Valencia accused the Anabaptists of teaching that Christ had forbidden his followers to go to war.[19] In his usual irenic style Grotius refused in his systematic works to mention pacifist groups by name. However, his correspondence reveals that he was in dialogue with Dutch Anabaptists, or Mennonites, and that he directed many of his whether-arguments against Mennonites and a pacifist-faction of the Remonstrants.[20] Indeed, as we noted above, his first major writing on international law was prompted by the pacifistic scruples of these two groups.[21]

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[18] DB, I, 1.

[19] See the references in n. 16.

[20] In a letter to Willem de Groot dated April 25, 1625, Grotius noted that "all war is disapproved by certain Remonstrants." A year and a half later he protested an anonymous effort to link his position on war in The Law of War and Peace with the pacifistic views of "the Anabaptists and certain of the Remonstrants" (November 2, 1626, to Willem de Groot).

Grotius' fine spirit of tolerance is evident in the following remarks about a Mennonite critic:

> "Nicolaus of Bye at one time lived with us in France. Now he lives in Alcmar. He is a holy man, as I think of the Mennonite sect, of the kind of men who are not evil. He wrote to me a little book (it was more than an epistle) in which he wants to prove that war and capital judgments are forbidden to all Christians, even to those constituted in power. He seeks also to respond to the arguments adduced in the book concerning the Law of War and Peace. I praise his piety and goodness. And if you see him, I should like him to know that this ambassadorship was undertaken by me in the spirit of procuring peace. . . ." (May 4, 1641, to Willem de Groot).

The above excerpts were gathered by Van Vollenhoven in "Growth"; the excerpts here translated appear in Latin on pp. 132, 140, and 158.

In their attempted refutation of pacifism the four theorists both made use of Augustinian-Thomistic arguments and developed new ones of their own. They repeated Thomas' views concerning self-defense and punishment of crimes by political authority, explicitly deriving both practices from the law of nature--a law whose content all the theorists were willing to spell out in some detail.[22]

Like Thomas, the later theorists appealed to authority in their argumentation. They combed the Old Testament for precedents, concentrating especially on Abraham's war with the four kings and on the exploits of the Maccabees.[23] If the practice of the Church seemed to be an ambiguous standard, they explained that the early Church objected not so much to the bearing of arms as to the idolatry and contact with pagans which military service entailed.[24] Confident that most of their intellectual predecessors had justified participation in warfare, they appealed to a consensus of philosophers, jurists, and post-Constantinian theologians.[25]

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[21] Fruin, "Unpublished Work," p. 32; cf. pp. 253-255 above.

[22] Vitoria, DJB, 1, 5, and 6; Suárez, DB, I, 4-5; Gentili, DJB, I, 5 (pp. 28-30); Grotius, JBP, I, 2, 1-4; cf. II, 1, 3; III, 20, 1-9.

[23] Vitoria, DJB, 1; Suárez, DB, I, 2; Grotius, JBP, I, 2, 1-2.

[24] Suárez, DB, I, 3 (reply to objection 3); Gentili, DJB, I, 5 (p. 29); Grotius, JBP, I, 2, 3.

If these arguments were insufficient to convince the skeptic, the four later theorists depicted the dire consequences of the pacifist position. They argued that without war wrongdoing would not be deterred, innocent persons would suffer harm, the security of the state would be threatened, and the "good of the whole world" undermined.[26] There were evils in war, yes, but even greater evils would result without war.[27] Grotius wistfully noted that if the entire world were to accept the law of Christ, all swords would indeed be beaten into plowshares. During the period prior to that blessed eventuality, however, military force had of necessity to be used against the "many men of a bloodthirsty, rapacious, unjust, and nefarious disposition."[28]

There was an important theoretical issue at stake in the just-war theorists' argumentation against pacifism. It was perhaps Suárez who formulated the issue most succintly. The first and basic question, said he, was "whether war is intrinsically evil," or, in alternative language, whether "war is . . . in itself (per se) evil."[29] Explicitly in the cases of Vitoria and Suárez and implicitly in the case of Grotius the later theorists were squarely within the Thomistic moral tradition. They were concerned to deny that the object (objectum) of war was evil and conversely to affirm that war could be morally permissible, provided that its circumstances and end were properly regulated.

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[25] Suárez, DB, I, 1 and 5; Gentili, DJB, I, 5 (p. 28); Grotius, JPr, III (pp. 40-41).

[26] Vitoria, DJB, 1; Suárez, DB, I, 5.

[27] Suárez, DB, I, 3 (reply to objection 4).

[28] JBP, I, 2, 8 (allusion to Isaiah 2:4); JPr, III (p. 32).

[29] DB, I, title and 7 (author's translation).

Who

In his discussion of the who-question Thomas distinguished carefully between the political and religious realms. The same natural-supernatural distinction was operative in the thought of the four later theorists, both in their analyses of authority and in their comments on other participants in war.

Authority

Prince

Just as Thomas Aquinas had accorded war-making authority to a plurality of princes, so did the four later theorists. What had been a daring thesis in the thirteenth century was by the sixteenth and seventeenth centuries a casual acceptance of obvious political realities.

The later theorists employed the same "perfect-community" terminology which Thomas had appropriated from Aristotle.[30] Predictably, they accorded to the Christian sovereigns of Europe the authority to wage war. But the logic of their natural-law position compelled them to accept as well the existence of perfect communities beyond the boundaries of Christendom. Consequently, they recognized the legitimacy of pagan princes, both those who ruled in the relatively civilized, monotheistic Moslem realm and those who exercised authority in the strange, new world of Latin America and the West and East Indies.[31]

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[30] Vitoria, DJB, 7; Suárez, DB, II, 4; Grotius, JBP, I, 3, 7.

Unlike Thomas, the sixteenth- and seventeenth-century theorists explicitly applied their theories of authority to contemporary European political affairs. In some cases the application was so clear that the theorists hardly paused to make it. Vitoria constantly referred to the Kings of France and Spain in terms that indicated his acknowledgment of their authority.[32] Suárez and Gentili regarded England and the Holy Roman Empire as perfect communities.[33] Grotius served for more than ten years as the French Ambassador of the Swedish queen Christina.[34] In addition, two of the theorists explicitly accorded perfect-community status to smaller sub-divisions of Europe, like the Republic of Venice and the Duchy of Milan.[35]

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[31] Vitoria, DI, I, 24; III, 17; Suárez, DB, II, 4; V, 7-8; Grotius, JPr, XII (pp. 220-222). Note that Gentili and Grotius denied legitimate authority to the leaders among pirates (Gentili, I, 4 [pp. 22-24]; Grotius, JBP, III, 3, 2). Grotius argued that since pirates formed associations only for wrongdoing they differed qualitatively from states (ibid.).

[32] DJB, 27; DI, III, 7. Vitoria expressly noted that several perfect communities might be under the jurisdiction of a common lord, for example, the Emperor. He argued that each prince who ruled a perfect community had authority to wage war, even if he were subordinate to another lord (DJB, 7-8).

[33] Suárez, Defensio fidei, III, 5, 7; Gentili, DJB, I, 3 (p. 16).

[34] Vreeland, Hugo Grotius, pp. 190, 228.

Other cases were more difficult, as the theorists themselves admitted. Vitoria noted that both the French and Spanish rulers claimed authority over Burgundy, Naples, and Milan.[36] According to Gentili, the experts disagreed concerning the authority of the Emperor's feudal subordinates, for example, the Italian Duke of Mantua or the German Duke of Brunswick.[37]

In one important case the theorists disagreed among themselves. In 1580, when succession to the throne of Portugal was disputed, King Philip II of Spain annexed Portugal by force of arms. The Spanish theorist Suárez justified the annexation and accepted Philip as the legitimate sovereign of Portugal. In fact, when Suárez wrote his essay "On War" in 1584, he tailored the discussion of doubtful causes to serve as a post facto justification of Philip's action.[38] On the other hand, the English and Dutch theorists Gentili and Grotius questioned the legitimacy of Philip's claim. With a trace of sarcasm Gentili asked:

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[35] Vitoria, DJB, 7; Gentili, I, 3 (p. 21).

[36] DJB, 27; cf. DI, III, 6 Vitoria, Suárez, and Grotius outlined elaborate rules for determining succession in such disputed cases (Vitoria, DJB, 27-30; Suárez, DB, VI, 1-6; Grotius, JBP, II, 7, 12-37).

[37] DJB, I, 3 (pp. 20-21).

[38] Pereña Vicente, La guerra, I, 28-29, 241; Suárez, DB, chap. VI.

> Why was Philip King of the Spains unwilling to submit to arbitration his claims on the kingdom of Portugal in competition with any of those who had a better right to that realm?[39]

As if to answer his own question, Gentili noted that many Italian and Portuguese jurists had decided in favor of other claimants to the Portuguese throne.[40] Although Grotius declined to discuss "by what right, or on what unjust grounds" Philip had become sovereign of Portugal, he was clearly skeptical of Philip's title.[41]

In analyzing Thomas' conception of political authority we noted that he placed certain limits on the civil power. According to Thomas, a prince could forfeit his right to rule either because of tyranny or because of apostasy and consequent papal deposition. The later just-war theorists discussed both of these grounds for the loss of authority, developing a theory of revolution, on the one hand, and elaborating a doctrine of indirect papal authority, on the other.

In their theories of revolution the later writers distinguished rather sharply between tyrants who tried to usurp authority (tyranni absque titulo) and legitimate rulers who exercised their authority in tyrannical fashion (tyranni quoad exercitium).[42] Since a tyrant of the first type was technically outside the perfect community, it was possible for the community to wage war against him. Vitoria and Suárez accorded the right to kill a usurper even to private citizens; Grotius hedged his permission with greater care, but his viewpoint was essentially the same.[43]

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[39] DJB, I, 3 (p. 16); cf. Pereña Vicente, La guerra, I, 82.

[40] DJB, I, 3 (pp. 18-19).

[41] JPr, XI (p. 172); cf. JBP, II, 23, 8 (fn. 2 in CIL trans).

[42] This same distinction, formulated in different terminology, was already present in Thomas Aquinas: CS, II, d. 44, qu. 2, art. 2, sol. (Dawson trans., pp. 182-185).

The second case was more complicated. Since a legitimate but tyrannical sovereign was technically a part of the community, violent action against him was not war in the strict sense. Therefore the employment of violence against such a ruler, unless he could somehow be officially deposed, had to be justified as resistance to tyranny or to princely sedition.[44]

Vitoria and Suárez employed the contract-theory to sanction resistance against a tyrannical but legitimate prince. Distinguishing logically between the state and the sovereign, both asserted the priority of the former over the latter. Vitoria argued that the whole state could rise to defend itself against a tyrannical ruler.[45] In a similar vein Suárez declared that the "whole republic" could depose a tyrannical king

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[43] Vitoria, Comentarios, ST, II-II, 64, 4, 5 (III, 287); Suárez, DB, VIII, 2; Grotius, JBP, I, 4, 15-19, esp. 16.

[44] There was in this vocabulary no possibility of speaking of "justifiable or just sedition." Sedition was per se an evil object (see Thomas Aquinas, ST, II-II, 42).

[45] Comentarios, ST, II-II, 64, 4, 5 (III, 287). For a good recent treatment of Vitoria's general theory of political authority see Stephen J. Reidy, Civil Authority according to Francis de Vitoria (River Forest, Ill.: Aquinas Library, 1959).

"by a public and general council of cities and chief men."[46]

An examination of Gentili's writings reveals a gradual loss of enthusiasm for revolution. In the relatively early work On the Law of War the Protestant lawyer followed the lesser-magistrates theory of revolution elaborated by Calvin, Beza, Hotman, and Buchanan--justifying resistance by inferior public authorities in cases of religious oppression. The early Gentili also approved military intervention by one sovereign on behalf of the subjects of another sovereign, if the latter was cruelly mistreating his people. However, in a work written seven years later, when he had close ties with the English court, Gentili argued that violence against a tyrannical prince was always unjust unless the ruler had been conditionally inaugurated.[47]

Similarly, Grotius' views on revolution became more moderate between 1606 and 1625. In his youthful treatise On the Law of Prize Grotius asserted that the right to make war was retained by a perfect community even if that community together with other perfect communities was subordinate to a supreme ruler, for example, the Emperor. According to Grotius, this right of the perfect community extended even to making war against the supreme ruler, if he did injury to the community.[48] Without flatly contradicting this early view, Grotius' later work On the Law of War and Peace gave prominence to the opposite truth. The mature Grotius explicitly rejected the Calvinistic thesis that inferior magistrates within a perfect community could rebel against their superior.[49] In general, he emphasized that insurrection against sovereign political authority was almost never justified. The few exceptions to this rule were delineated with infinite care.[50]

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[46] Defensio fidei, VI, 4, 15 (author's translation from the Latin text in the CIL Series, p. 721); cf. DB, VIII, 2. Suárez's general political theory has been most recently analyzed by Wilenius, Social and Political Theory. For an older treatment see Heinrich Rommen, Die Staatslehre des Franz Suárez, S. J. (M. Gladbach: Volksvereins-Verlag, 1926).

[47] DJB, I, 11 (pp. 51-52); I, 16; Regales Discursus tres, III: De vi civium in regem semper iniusta. The latter work is cited by Van der Molen, Alberico Gentili, pp. 234-239; cf. ibid., pp. 124, 230.

In their views on papal authority to depose kings the four theorists split rather sharply along Catholic-Protestant lines. While conceding that the Supreme Pontiff had no direct power over civil rulers in temporal matters, the Catholic theorists strongly asserted the Pope's indirect power over princes in cases which involved Christians or possible damage to the Church.[51] On this basis Vitoria argued that the Pope could legitimately depose a pagan sovereign if many or most of his subjects were Christians, since such a ruler might influence his converted subjects to apostasize.[52] Suárez spelled out in great detail the Pope's authority to excommunicate or depose kings who were "incorrigibly wicked," "schismatics," or "stubborn heretics."[53] Gentili, however, was not at all pleased with assertions of the indirect papal jurisdiction over civil rulers. He complained that Catholic theorists wanted to break magisterial power merely in order to lay it all down at the feet of the Supreme Pontiff.[54] Always the diplomat, Grotius maintained a discreet silence about the indirect power of the Pope. However, his general tendency was to advocate toleration among Christians in religious matters and to assign to kings, rather than the Pope, the role of correcting gross abuses against religion.[55]

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[48] JPr, XIII (pp. 283-285). In other words, the highest authority in a perfect community was entitled to make war on the supreme ruler over several perfect communities, even if the former was technically subordinate to the latter.

[49] JBP, I, 4, 6.

[50] Ibid., I, 4, 8-14.

[51] Vitoria, De potestate ecclesiae, I, 5, 10 and 12; translated by Gwladys L. Williams in Scott, Spanish Origin, Appendix D, pp. c-ci, cii (hereafter cited as "Williams trans."). Suárez, DB, V, 4.

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[52] DI, III, 14; cf. II, 5. Vitoria based this view at least in part on Thomas Aquinas, ST, II-II, 10, 10. See his commentary on that passage and DI, III, 14.

[53] Defensio fidei, III, 23, 2; cf. III, 23, 7, 10, 14-15 (CIL trans., pp. 685-686; 689-690, 692, 694-696).

[54] Regales Discursus tres, III: De vi civium in regem semper iniusta (Helmstadt, 1669), p. 95; cited by Van der Molen, Alberico Gentili, pp. 238-240, 316. Gentili's criticism was directed specifically at Bellarmine and other Catholic Monarchomachs, but on the issue of the indirect papal power the positions of Bellarmine and Suárez were virtually identical (Sabine, History of Political Theory, p. 390). The work of Suárez cited in n. 53 above appeared too late for Gentili to respond to it.

[55] JBP, II, 20, 50; II, 20, 44. Dumbauld speaks of Grotius' "strongly Erastian views" regarding the relation of church and state (Life and Legal Writings, p. 15).

If the four writers diverged somewhat in their theories concerning the loss of political authority, their concrete applications of those theories often revealed positive contradictions. When Vitoria argued that the Pope could depose Indian princes whose domains included many Christians, no one directly challenged his position.[56] However, Suárez elaborated his views on revolution and indirect papal authority in a work explicitly directed against King James I of England. Polemically applied, his theory constituted an ominous warning to a prince whom he considered to be both tyrannical and heretical.[57] Gentili did not live to see Suárez's treatise, but given his opposition to papal authority over princes, his growing conservatism regarding revolution, and his close relationship with the court of King James I, one can easily conjecture how he would have responded.[58]

On the other hand, Suárez and Grotius were diametrically opposed in their assessments of the Dutch revolt against Spain; Gentili's perspective on the conflict approximated that of

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[56] Vitoria, DI, III, 14.

[57] Defensio fidei, esp. III, 23, and VI, 4. The full title of Suarez's work was A Defense of the Catholic and Apostolic Faith in Refutation of the Errors of the Anglican Sect with a Reply to the Apologie for the Oath of Allegiance and to the Preface of His Most Serene Majesty James, King of England. The work was dedicated "to Their Most Serene Majesties the Catholic Kings and Princes of all Christendom" (CIL trans., p. 647).

[58] Gentili was hostile to Bellarmine's views on papal authority even before King James I was directly attacked by Bellarmine and Suárez--in works which appeared in the years 1607-1609 and 1613, respectively. See n. 54 above and Fichter, Man of Spain, pp. 292-293.

Grotius. In the view of Suárez the Spanish king had every right to coerce his heretical, rebellious subjects in the Low Countries.[59] According to the Protestant Gentili, it had been entirely fitting and proper for Queen Elizabeth of England to aid the Netherlands in its struggle against Spanish injustice.[60] As one might expect, Grotius approved the action of his people against the Spaniards. In his view the "free people" of Holland constituted a perfect community. Their leaders had delegated authority to the King of Spain on condition that he rule Holland justly. When the King, on a trumped-up pretext began to "transgress against the laws and the state," the States Assembly of Holland was fully justified in revoking its previous grant of authority and in joining the other Low-Country provinces in a declaration of war against the Spanish oppressor.[61] Even in his mature, restrictive theory of rebellion, Grotius tailored the exceptions to fit Dutch policy against the Spaniards. In the words of Figgis,

> His definition of the cases in which resistance is justified is so narrow that it may be doubted

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[59] DB, VIII, 13; De fide, Disp. XX, section 3, no. 6, in Opera Omnia, ed. by M. André (28 vols.; Paris: Ludovicus Vivès, 1856-1878), XII, 511. It must be admitted that Suárez did not explicitly name Belgium or the Low Countries in his works. However, he quoted with approval the views of Ayala on the suppression of rebels (DB, VIII, 13). Ayala had written his work De jure et officiis bellicis in part to justify Spanish action in the Low Countries (see, for example, I, 2, 17). Pereña Vicente also argues that Suárez supported Spanish policy in the Low Countries (La guerra, I, 122-123).

[60] DJB, I, 16 (p. 77); II, 2 (p. 140).

[61] JPr, XI (pp. 169-170); cf. XIII (pp. 283-289).

> whether any case but that of the Netherlands ever fell within it.[62]

Church

The authority of the Church in relation to war was most strongly asserted by the two Catholics theorists, Vitoria and Suárez. But the Protestant lawyers also referred, at least in passing, to a special role of the Church in war.[63]

In contrast to Thomas, the later theorists explicitly discussed the peace-making authority of the Church. Vitoria, Suárez, and Gentili noted that the Pope sometimes acted as arbiter in disputes between Christian princes.[64] According to Vitoria, papal mediation served to prevent civil war within Christendom.

> When princes are at variance with one another about some right of sovereignty and are rushing into war, he [the Pope] can act as judge and inquire into the claims of the parties and deliver judgment, a judgment which the princes are bound to respect, lest those numerous spiritual evils should befall which are the inevitable result of a war between Christian princes.[65]

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[62] John Neville Figgis, Studies of Political Thought from Gerson to Grotius, 1414-1625 (2d ed.; Cambridge: University Press, 1923), p. 185.

[63] The authority of the Pope to depose Christian princes, which was treated above, might just as well be regarded as an aspect of the authority of the Church. It was treated above because it directly affected the authority of the prince to wage war but was only indirectly related to the Church's authority to make war.

[64] Vitoria, DI, II, 5; De potestate ecclesiae, I, 5, 13 (Williams trans., pp. cii-ciii); Suárez, DB, II, 5-7; Gentili, DJB, I, 3 (p. 16).

[65] DI, II, 5.

XUM

Quoting De Soto, Suárez added:

> A war between Christian princes is rarely just, since they have at hand another ready means of settling their mutual disputes.[66]

On the other hand, all three theorists were somewhat wary of papal intervention in political disagreements. They were particularly concerned to protect the authority of the prince from ecclesiastical encroachment. Thus Vitoria observed that the Pope intervened only seldom, lest he be charged with "ambition" or precipitate a princely "revolt from the Apostolic See."[67] In the opinion of Suárez, a prince was not bound to respect a papal settlement if the Pope's decision was "manifestly unjust."[68] And Gentili complained that in one case

> The Pontiff seemed to present himself as arbiter as if it were a right peculiarly his own.[69]

A second peace-making function of the Pope was to divide missionary territories into regional "spheres of influence." Noting that such territories were not subject to any particular bishop, Suárez argued that the Supreme Pontiff, with a view to the good of the whole Church, should entrust their evangelization to specific territories or princes.[70] According to Vitoria, the Pope had authority to go a step further: he could restrain free trade within the spheres of missionary influence, if commercial competition threatened to disturb the orderly propagation of the Gospel.[71] Grotius, however, emphatically denied the Pope's presumed right to restrain trade, tartly remarking that

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[66] DB, II, 5.

[67] DI, II, 5.

[68] DB, II, 5.

[69] DJB, I, 3 (p. 16)

[70] De fide, Disp. XVIII, 1, 6-7, in Selections (CIL trans., pp. 745-746).

> No papal authority is effective against the eternal law of nature and of nations.[72]

As we have seen, both Gentili and Grotius were highly suspicious of the papal peace-making function. In his mature work Grotius developed a Protestant counter-proposal for the pacific settlement of disputes. According to his scheme the role of the Pope was assumed by a council--not an ecclesiastical council, but a convocation of Christian national leaders.

> It would be advantageous, indeed in a degree necessary, to hold certain conferences of Christian powers, where those who have no interest at stake may settle the disputes of others, and where, in fact, steps may be taken to compel parties to accept peace on fair terms.[73]

The views of our four theorists on the role of the Church as peace-maker were closely related to contemporary political affairs. At the conclusion of the fifteenth century Pope Alexander VI had divided the New World into Spanish and Portuguese spheres of influence.[74] Vitoria and Suárez justified the papal line of demarcation as a step toward the orderly evangelization of Latin America.[75] At the beginning of the seventeenth century, however, the Portuguese sought to restrain the Dutch from trade in the East Indies, basing their policy on the Pope's boundary-determination. The Dutchman Grotius protested that the right of free trade, which the Dutch East India Company was exercising, took precedence over any mere papal pronouncement.[76]

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[71] DI, III, 10.

[72] JPr, XII (p. 258).

[73] JBP, II, 23, 8, 4.

[74] De fide, Disp. XVIII, 1, 7 (CIL trans., p. 746).

The four theorists were concerned about the Church's concrete involvement in arbitration, but in different ways. Suárez and Gentili thought primarily of the dispute between Spain and Portugal in 1580. Both were opposed to papal arbitration in the case, but Suárez wished to justify his king's refusal to submit to arbitration, while Gentili argued that Philip should have accepted non-papal mediation.[77] Vitoria and Grotius, on the other hand, were genuinely distraught concerning wars among European Christians--in the one case, the wars between the Catholic monarchs of France and Spain, and in the other, the Protestant-Catholic struggles which culminated in the Thirty Years' War.[78] Grotius gave poignant expression to his distress in the following words:

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[75] Vitoria also defended the Pope's theoretical right to divide up the lands of the Saracens among Christian princes for missionary and/or military responsibility (DI, III, 10).

[76] JPr, XII (p. 258).

[77] Pereña Vicente, La guerra, I, 241; Gentili, DJB, I, 3 (pp. 16-19).

[78] Vitoria, DJB, 27; DI, II, 5; Grotius, JBP, Prol., 28.

> Throughout the Christian world I observed a lack of restraint in relation to war, such as even barbarous races should be ashamed of; I observed that men rush to arms for slight causes, no cause at all, and that when arms have once been taken up there is no longer any respect for law, divine or human; it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes.[79]

Like Thomas Aquinas, the later theorists asserted the authority of the Church to make war or to advocate war in circumstances where religion was somehow at stake. The Catholic theorists explicated this authority of the Church in great detail; in the Protestant writers there were only vestigial traces of such religious involvement in military affairs.

According to the Catholic theorists, the general rationale for religious war was "grave harm to spiritual interests."[80] Such harm occurred when Christians suffered at the hands of unbelievers or when heresy developed. Vitoria explained that if believers were subjected to harassment by infidels, the Pope could first urge a Christian king to wage a defensive war against the unbelievers. If the king refused, the Pope himself could lawfully declare war and call together the king's subjects.[81] Suárez was more specific: he argued that the Pope could authorize military action in any situation where Christian missionaries were obstructed by unbelievers or where unbelieving princes "acted to harm the faithful."[82] These offenses were, in his view, "injuries to the Church which she has a special right to repel and avenge."[83] To the objection that the early Church had not supported its missionaries with military force Suárez replied:

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[79] Grotius, JBP, Prol., 28. Grotius' opposition to papal arbitration in the Thirty Years' War was noted above (Chap. III, n. 185).

[80] Vitoria, De potestate ecclesiae, I, 5, 13 (Williams trans., p. ciii).

[81] Ibid. (p. cii).

> If, during the first years of the Church, this mode of coercion was not customarily practiced, the reason was, not that this coercion was impermissible, but that the Church in those days had not the temporal means of resisting the enemies of the faith.[84]

As might be expected, Grotius did not affirm the Pope's authority to wage religious war against unbelievers. However, he proposed a functional equivalent, namely, "that all Christians are under obligation to enter a league against the enemies of

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[82] DB, V, 7; De fide, Disp. XVIII, 1, 4 and 7 (CIL trans., pp. 742, 746). Behind the views of Vitoria and Suárez lay the text of Thomas Aquinas in ST, II-II, 10, 8, and Cajetan's authorative comments on that text:

> "In the same article consider diligently the just cause of war against infidels: namely, that they not impede the faith of Jesus Christ by any of three modes: (1) by blasphemies, as by saying evil things about Christ Jesus or his saints or his Church; (2) by persuasions, inducing our [people] to infidelity; or (3) by persecutions, either in common, as daily we see the Turks invade the peoples of the Christian name; or in particular, if they kill preachers of the faith. . . . It pertains to impeding the faith, if they do not allow in their lands the public preaching of the faith, if they reward those who deny Christ and accept their faith, and other things of this kind" (Commentary, ST, II-II, 10, 8, IV [Leonine ed., VIII, 90]; author's translation and italics).

[83] DB, V, 7.

[84] De fide, Disp. XVIII, 1, 10 (CIL trans., p. 749).

Christianity."[85] Without making an explicit policy-recommendation Gentili approved historic wars fought to protect Christians from infidel attack.[86]

In the case of heresy, both Vitoria and Suárez approved of coercive counter-measures; but only Suárez specifically envisaged the need for war against heresy. He argued that if the Pope deposed a heretical king and the king resisted papal authority, the Supreme Pontiff could lawfully authorize other kings "to invade the kingdom of the deposed ruler."[87] Gentili and Grotius, on the other hand, vehemently opposed waging war on the ground of heresy.[88]

The contemporary application of the theorists' thought is not difficult to discover. The anonymous "unbelievers" were the Moslems, who seemed to constitute a threat to Christian Europe, and the Indians, who mistreated Christian missionaries or their converts.[89] As employed by Suárez, the term "heretic" referred to Protestants in general and to King James I of England in particular.[90] The Protestant theorists were therefore at some

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[85] JBP, II, 15, 12, title.

[86] DJB, I, 9 (p. 40).

[87] Defensio fidei, VI, 4, 19 (CIL trans., p. 722); cf. Suárez's exhaustive discussion of heresy in De fide, Disp. XIX-XXIV; Vitoria discussed the treatment of domestic heretics in DI, I, 8-19.

[88] Gentili, DJB, I, 10 (pp. 45-46); Grotius, JBP, II, 20, 50.

[89] Vitoria, De potestate ecclesiae, I, 5, 13 (Williams trans., p. cii); Suárez, De fide, Disp. XVIII, 1, 7 (CIL trans., pp. 746-747).

[90] Suárez, Defensio fidei, VI, 4, 17-19, and entire work.

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pains to deny the authority of the Church to wage war against heretics.

Other Participants

Subjects

In discussing the right of private citizens to employ violence, the later theorists essentially repeated the position of Thomas Aquinas: they limited the subject to purely defensive action. "Defense" was carefully defined as a moderate and immediate response to an attack in progress.[91]

Although they did not contradict Thomas, the sixteenth- and seventeenth-century theorists supplemented his position in one important respect: they paid infinitely greater attention to the plight of the individual soldier. Vitoria argued passionately and repeatedly that the soldiers often did not know whether their prince's call to war was justified or not. Similarly, Grotius expressed concern for soldiers who were compelled to perform military service.[92] In their discussions of collective guilt and conscientious objection, which will be treated below, the later theorists also revealed an acute sensitivity to the plight of the little man.

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[91] See, for example, Vitoria, DJB, 4-5; Suárez, DB, I, 4 and 6; Grotius, JBP, I, 3, 1-3; II, 1, 1-14. Note, however, that Vitoria permitted defense of honor and of property, whereas Grotius argued that to kill a man in these two cases contradicted the Law of the Gospel (Vitoria, DJB, 4-5; Grotius, JBP, II, 1, 10 and 13).

Like Thomas Aquinas, Grotius was keenly aware of Augustine's restrictive position on self-defense and tried to find a middle way between the Roman Law's permissive position and the restrictive positions of the New Testament and Augustine (JBP, I, 3, 3). In contrast, Vitoria and Suárez in their discussions of self-defense completely ignored Thomas' strictures concerning the intention to kill an assailant (ST, II-II, 64, 7).

[92] Vitoria, DJB, 32, 48, 59; DI, III, 6; Grotius, JBP, III, 11, 3.

It is difficult to determine the precise reasons for this heightened awareness of the individual. In the cases of Vitoria and Grotius this new emphasis was at least in part the result of personal acquaintance with war--internecine strife among Christians and the ruthless brutality of the conquistadores.

Mercenaries

Three of the later theorists devoted explicit attention to the question of mercenary-service. Vitoria and Grotius sharply criticized mercenaries for making higher pay rather than the justice of the cause their criterion for participation in warfare. In the words of Grotius,

> No manner of life is more wicked than that of those who serve as soldiers for hire without regard to the cause of hostilities and for whom "Where greatest profit is, there too is right."[93]

Without directly contradicting this critical viewpoint, Suárez emphasized the similarity of mercenaries to ordinary subjects. Sylvester of Priero and Cajetan had asserted that hired soldiers, in contrast to subjects, should not serve in wars with doubtful causes. Explicitly rejecting the view of his Italian predecessors, Suárez argued that mercenaries could lawfully bind themselves to fight even in doubtful causes.[94]

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[93] Grotius, JBP, II, 25, 9, 1; cf. II, 25, 9, 2-3; II, 25, 10; JPr, IX (p. 128). Vitoria, Commentary on ST, II-II, 40, 1, 8 (translated by Gwladys L. Williams in Scott, Spanish Origin, Appendix F, p. cxix). Hereafter cited as "Williams trans."

During the sixteenth and early seventeenth centuries European armies relied chiefly on mercenary troops. In every major war of this period hired soldiers served on both sides of the conflict.[95] The chief suppliers of mercenary troops were the Swiss cantons, which made formal contracts to provide their renowned pikemen to European belligerents. German cavalry (reiter) and infantry (landsknechts) were also in heavy demand.[96]

In 1536, or just a few years after Vitoria's critical comments on mercenaries, his Emperor fielded an army consisting of 65,000 troops; of these, about 50,000 were hired German and Italian troops.[97] During the French civil war and the Dutch war against the Spaniards, Protestant and Catholic princes in Germany supplied troops to their co-religionists.[98] The Thirty Years' War, in the midst of which Grotius completed his On the Law of War and Peace, constituted perhaps the high-water mark of mercenary service. In the words of Montross, "Both sides strained their resources to put large numbers of hired soldiers into the field."[99]

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[94] DB, II, 10-11.

[95] Paul Schmithenner, "Mercenary Troops," Encyclopaedia of the Social Sciences, 1933, X, 341; Montross, War, p. 205. According to Montross, the first indigenous national standing army was organized about 1620 by Gustavus Adolphus of Sweden (ibid., pp. 263, 268).

[96] Oman, Sixteenth Century, pp. 36-38, 64-66, 74-79, 87-88, and passim; Schmithenner, "Mercenary Troops," p. 342.

[97] Oman, Sixteenth Century, p. 61; Montross, War, p. 212.

[98] Oman, Sixteenth Century, p. 538.

[99] War, p. 263.

Albrecht von Wallenstein, who has been called "the greatest of the mercenary captains,"[100] was a major military leader of the Catholic League between 1625 and 1634. During the early 1630's German mercenaries constituted no less than two-thirds of the Protestant army led by Gustavus Adolphus.[101]

Mercenary soldiers were generally not characterized by either loyalty or discipline. Because they sold their services to the highest bidder, they were often willing to change sides in the middle of a war. The prince who failed to pay or provision his mercenary soldiers on time faced either desertion or mutiny.[102] As Oman observes, mercenary troops were "inspired neither by loyalty to a sovereign, nor devotion to a cause."[103]

It was this lack of devotion to a cause which especially provoked the ire of Vitoria and Grotius. In their view mercenary-service undermined the just-cause criterion of the just-war theory.[104] On the other hand, Suárez seems to have been more willing to accept the military status quo. By permitting mercenaries to wage war in doubtful causes, he gave them a virtual blank check.

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[100] David H. Zook and Robin Higham, A Short History of Warfare (New York: Twayne Publishers, 1966), p. 90.

[101] Montross, War, p. 281.

[102] Oman, Sixteenth Century, pp. 38-39, 65-66, 77-79.

[103] *Ibid*., p. 38.

[104] Vitoria and Grotius may also have believed that the abolition of mercenary-service would do much to control the internecine warfare of European Christians.

Priests

As they had done in the case of personal self-defense, some of the later theorists relaxed Thomas' strict position on clerical participation in war. Vitoria and Suárez explicitly conceded to clerics the right to kill in self-defense, in defense of their goods, or in a defensive war. Both of the Spanish theorists also noted that a cleric who was also a temporal prince could lawfully declare war.[105] In the opinion of Grotius, however, such permissivist tendencies represented ethical retrogression. He complained that according to "ancient practice" clerics did not kill in defense of property but that in modern times they "had been released from censure in this matter."[106] Both he and Gentili seem to have assumed that priests took no part in warfare.[107]

The chaplaincy-role of clerics received attention from three of the later theorists. For Vitoria the time-element was the basic ethical consideration: a chaplain might encourage soldiers to kill the enemy before the commencement of a battle but not during the battle itself.[108] In the view of Suárez the content of the chaplain's exhortation was of primary importance: he could lawfully urge the soldiers to act bravely but not incite them to homicide![109] Gentili's few comments on military chaplains took the form of a threat; he warned that religious men might be

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[105] Vitoria, Commentary on ST, II-II, 40, 2, 7 (Williams trans., pp. cxxviii-cxxviii); Suárez, DB, III, 2 and 6. Both writers took their cues from a fourteenth-century revision of the canon law (see above, Chap. II, n. 115).

[106] JBP, II, 1, 13, 2.

[107] *Ibid.*, III, 11, 10; Gentili, DJB, II, 22 (p. 261). In another passage Grotius hinted that the Protestant doctrine of the priesthood of all believers might have revolutionary implications for Christian participation in warfare (JBP, II, 26, 2).

[108] Commentary on ST, II-II, 40, 2, 7 (Williams trans., p. cxxviii).

> cruelly treated, if in speeches, during expeditions, amid the toils of war they aid their countrymen by works, and encourage them against the enemy.[110]

Striking evidence that chaplains were an important aspect of contemporary warfare can be found in Charles V's table of military organization. In 1534, or during the lifetime of Vitoria, Charles V approved the division of the Spanish army into three tercios of 3,096 men each. Within each tercio the chief chaplain was one of nineteen staff members; within each company one chaplain served 258 men. The chaplains outnumbered the medical staff thirteen to three and earned three times the salary of the army's privates.[111] Even the German mercenary-armies of the sixteenth century were served by military chaplains. According to Philipp Hofmeister,

> Each squad (about 400-500 men) had its own clergyman; after the Reformation the confession of the chaplain corresponded to that of his lord.[112]

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[109] DB, III, 7. In Suárez's view the latter act related the cleric "directly" and "intentionally" to homicide, while the former did not.

[110] DJB, II, 22 (p. 262).

[111] Oman, Sixteenth Century, pp. 59-60. Oman concedes that the "enormous" number of Spanish chaplains was atypical for the period.

[112] "Militärseelsorge," Lexikon für Theologie und Kirche, 2d ed., 1962, VII, 416 (author's translation).

Military orders

As we have noted, Thomas Aquinas devoted rather detailed attention to the question of military orders. In contrast, only Vitoria among the later theorists commented on these participants in warfare. He was unsparing in his criticism of the Spanish military orders.

> You see: they promise obedience and are disobedient. . . . They promise poverty and are the very rich. . . . They promise continence and are all given to every luxury. Therefore I say that such orders were instituted in a most holy way; but . . . now, when they are free, they have deteriorated.[113]

Underlying the decline of the military orders was an almost total loss of their raison d'être. According to O'Callaghan,

> The destruction of the crusaders' states and the completion of the Hispanic Reconquest deprived the military religious orders of any real reason for existence.[114]

During the fourteenth and fifteenth centuries some Spanish orders had sought permission to marry; some had also become embroiled in domestic politics. Both state and Church responded by placing strict curbs on the knights. In the late fifteenth century King Ferdinand, as an act of self-protection, annexed all indigenous orders to the Spanish crown. Shortly before Vitoria penned his critical comments, Pope Adrian VI confirmed the royal annexation and made it permanent.[115]

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[113] Comentarios, ST, II-II, 188, 3 (VI, 388-389; author's translation).

[114] "Military Orders," p. 846.

[115] Ibid.; Woodhouse, Military Religious Orders, pp. 296, 300-301, 303-305.

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Two Levels of Cause

Like Thomas Aquinas, all four later theorists distinguished between natural and religious causes for war. On the natural level, all four authors explicitly related the idea of just cause to the law of nature. Vitoria assumed the existence of the natural law, referring to it both casually and repeatedly in his discussion of just cause.[116] In his analysis of the when-question Suárez began by asking: "What is a just cause of war, on the basis of natural reason?"[117] Gentili devoted primary attention to the treatment of "natural causes for war."[118] And Grotius carefully distinguished his discussion of just cause according to the "law of nature" from his treatment of the same topic according to the "volitional law of nations."[119]

At this level the just-war theory was clearly related to a major stream within the Western intellectual tradition, namely, the natural-law theory as formulated by Stoic philosophers, Roman lawyers, and Thomas Aquinas.[120] By explicitly connecting the just war and the natural law the later theorists made clear their concern to discover universally-applicable ethical criteria--standards which would be normative for all men and nations in all times and places.

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[116] DI, III, 2, 3, and 16; DJB, 4 and 13; cf. 1 and 19.

[117] DB, IV, title.

[118] DJB, I, 12-19.

[119] JBP, II, 18, 1; cf. II, 2-17, 18-19.

[120] Gentili's natural-law theory was based primarily on the lawyers and philosophers (DJB, I, 1; pp. 9-11). Suárez and Grotius devoted major systematic treatment to the question of law, Suárez in an extensive treatise On Laws, and God the Legislator, Grotius in the opening chapters of On the Law of War and Peace (I, 1, 9-17). Vitoria's major discussion of law occurred in

But the four later theorists were also Christians, vitally concerned with questions of religious faith. Three of them--Vitoria, Suárez, and Grotius--were accomplished theologians, and the fourth wrote an occasional work entitled "Concerning the Antichrist, the Roman Papacy."[121] It is therefore not surprising that all four theorists considered possible religious grounds for war.

For Vitoria the central issue at the religious level was the relation of missionary activity to the problem of war.[122] Suárez frankly raised the question: "Can Christian princes have any just ground for war beyond that which natural reason dictates?"[123] "Divine causes" constituted one of Gentili's three basic causes for war.[124] And Grotius felt obliged to discuss whether "crimes against God" should be punished by warfare.[125]

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comments on Thomas' treatise on law (Comentarios, ST, I-II, 90-108 [VI, Appendix I, pp. 411-493]). For evidence of Grotius' indebtedness to Thomas' treatise on law, see JPr, I, 2 (p. 22); I, 3 (pp. 33, 34, and 38).

[121] Van der Molen, Alberico Gentili, p. 246.

[122] DI, opening text and entire treatise.

[123] DB, V, title.

[124] DJB, I, 8-11.

[125] JBP, II, 20, 44, title. Specific examples of causes at both levels will be enumerated below.

Discussion of Cause in General Terms[126]

General types of cause

With minor exceptions, the four later theorists accepted a trilogy of general causes for war: defense (defensio), recovery of property (recuperatio rerum), and punishment (punitio).[127] Of these, the first was unambiguously identified with defensive war and the third with "offensive" or "aggressive" war.[128] The status of "recovery of property" was less clear.

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[126] In their general discussions of the cause-question the later theorists maintained no clear distinction between political and religious causes for war. We shall therefore assume, unless there is explicit evidence to the contrary, that at this abstract level their analysis was applicable to either political or religious war. The precise relationship of natural and supernatural causes is investigated below in the section entitled "Enumeration of Specific Causes."

[127] Vitoria accepted this trilogy but added two other general causes: compensation; and peace and security (DJB, 15-19; cf. 44). Although Suárez never named the three causes in series, the trilogy clearly underlay his analysis of defensive and aggressive war (DB, I, 6; IV, 4-5). Grotius accepted the trilogy of general causes as the consensus of the just-war tradition, but he insisted that a fourth general cause ought to be added: "the obtaining of what is owed to us" (JBP, II, 1, 2, 2; cf. JPr, VII; p. 67). Only Gentili failed to mention the trilogy, working instead with the polarity of defense and offense and the subcategories of necessity, expediency, and honor (DJB, I, 12-19). For evidence that this trilogy was standard in the later just-war theorists see Regout, La doctrine, pp. 140-143, 31-34, and passim.

[128] The terms "defensive war" and offensive war" seem to have occurred first in Vitoria (DJB, 1; Regout, La doctrine, p. 19, n. 1). Suárez used the term "aggressive" rather than "offensive (DB, I, 1 and 6). Grotius seems to have avoided both of the latter terms. Gentili used the phrase "make war" (bellum inferre) for offensive war to diffferentiate it from defensive war (DJB, I, 18, title; cf. I, 13-16).

The definition of defense or defensive war was quite precise in all of the theorists: both terms signified the warding off of an attack and the avoidance of an injury or wrong. The attack itself was conceived as either imminent or already in progress.[129] Without exception the theorists grounded the right of defense in the natural law as articulated by the Roman civil law. In their view the right of defense applied to both persons and property and could be exercised either by individuals or by states.[130]

When punishment was designated as the general cause, war was conceived as a response to a wrong or injury already suffered.[131] The war was offensive or aggressive in the sense that it was not necessarily preceded by military action on the part of the enemy. In their discussions of punitive war the theorists concentrated attention on the culpability of the enemy and on war as a means for avenging the injury which the enemy had previously inflicted.[132] The natural-law basis for punitive war was therefore not the right of defense but the right of political authority to punish offenders against the common good. This right to punish was not ordinarily accorded to private individuals.[133]

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[129] Suárez, DB, I, 6; Grotius, JBP, II, 1, 2, 1; cf. Vitoria, DJB, 1 and 3; Gentili; DJB, I, 13.

[130] Vitoria, DJB, 1; Suárez, DB, I, 4 (indirectly); Gentili, DJB, I, 13 (p. 59); Grotius, JBP, II, 1, 3. The major relevant passage from the Roman civil law was Digest, 1, 1, 3. As noted above, Grotius qualified the right of defense somewhat in prescribing appropriate action for Christians (JBP, II, 1, 10 and 13).

[131] Vitoria, DJB, 13; Suárez, DB, I, 6; Gentili, DJB, I, 18; Grotius, JBP, II, 20, 1 and 38-51.

[132] In Regout's opinion the idea of punitive justice predominated in sixteenth-century discussions of just war. Regout attributes this predominance to the influence of Thomas Aquinas

The third general cause, recovery of property, was assigned to either offensive or defensive war, depending on the circumstance. An immediate attempt to recover property which had just been seized qualified as a kind of defense and could be undertaken by a private citizen.[134] On the other hand, the recovery of property after an interval of time was considered an aspect of offensive war; such action was reserved to political authority.[135]

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and Cajetan. He adds the following helpful clarification:

> "The normal case for all the writers is that just war is waged against the culpable. In a purely defensive war, when one must defend his life and his goods against an unjust aggression, the enemy will naturally be considered as culpable, but the culpability and vengeance are not here taken into account" (La doctrine, p. 271; author's translation).

It is thus clear that the domestic-law analogy for a punitive war was criminal, rather than civil, law.

The concept of "punishment" was applied both to military action in the course of the war and to the inflicting of penalties on culpable enemies after the successful conclusion of the war (Vitoria, DJB, 46, 57, 58; Suárez, DB, VII, 7; Gentili, DJB, III, 2-11; Grotius, JBP, III, 11, 7, 4; III, 11, 16, 1; III, 11, 17).

[133] Vitoria (DJB, 9) and Grotius (JBP, III, 20, 8, 2, 4, and 5) mentioned extraordinary cases which constituted exceptions to this generalization.

[134] Vitoria, DJB, 1 and 5; Suárez, DB, I, 6. The technical term for "immediate" was in continenti.

[135] Vitoria, DJB, 5; Suárez, DB, IV, 4; Grotius, JBP, II, 1, 2, 1; II, 2, 1; II, 20, 1. The technical term for "after an interval of time" was ex intervallo. On in continenti and ex intervallo see Regout, La doctrine, pp. 31-32, 142-143.

In either case the focus of this cause was on reconstituting an original balance of property or rights--an equilibrium which unjust enemy action had disturbed.[136]

The categories of "defense" and "punishment" underwent considerable extension in the hands of the later theorists, particularly when they sought to justify wars of intervention. Thus the concept of "defense" was gradually expanded to include defending the subjects of another sovereign against their sovereign and the defense of allies.[137] The ultimate extension was reached when the "defense" of innocent persons anywhere in the world was accepted.[138] In parallel fashion the concept of "punishment" was first applied to crimes against oneself or one's own nation, then to crimes against one's allies or friends.[139] Grotius took the final step when he accorded to princes not guilty of the same crime the right to punish crime committed anywhere in the world.[140]

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[136] The domestic-law analogy for the recovery of property was thus a civil suit, rather than a criminal trial (Van Vollenhoven, Framework, pp. 66-70).

[137] Gentili, DJB, I, 16; I, 15 (p. 72); cf. Vitoria, Commentary on ST, II-II, 40, 1, 6 (Williams trans., pp. cxvii-cxviii).

[138] Vitoria, DI, III, 15; Suárez, DB, V, 5, 7, and 8.

[139] Vitoria, Commentary on ST, II-II, 40, 1, 5 (Williams trans., p. cxvii); Suárez, DB, IV, 3.

[140] Grotius, JBP, II, 20, 40, 4; II, 20, 44, 1. Suárez had explicitly rejected this view forty years before Grotius advocated it. In adopting the position Grotius expressly criticized several members of the Spanish school, including Vitoria, for rejecting it. The fact that Grotius did not name Suárez in

XUM

Central issues concerning cause

In the centuries between Thomas Aquinas and the later theorists certain refinements were introduced into the discussion of cause. It became traditional for just-war theorists to take a position on some or all of these disputed questions.[141] The following exposition first takes note of the four later theorists' positions on eight central issues concerning the cause itself. Second, the analysis turns to the theorists' views on the question: Who decides about the justice of a cause, and how?

Cause itself

In one way or another, all four theorists affirmed that a just cause was a "necessary" cause and that the employment of military force should be a last resort.[142] According to Gentili,

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his critique is strong evidence that he had not read Suárez's De bello when he wrote On the Law of War and Peace (see above, Chap. III, n. 198).

In the secondary literature of the 1920's and 1930's the just-war theorists' views on intervention were hotly debated. Van Vollenhoven charged that the pre-Grotian just-war tradition had been narrowly nationalistic and egoistic; in his view only Grotius, with his theory of worldwide sanctions, provided sufficient basis for international action by the League of Nations (C. Van Vollenhoven, "Grotius and Geneva," Bibliotheca Visseriana, VI [1926], pp. 23, 26-27, and passim). The Catholic rejoinder was a full-length book by the Franciscan lawyer D. Beaufort. Beaufort attempted to refute Van Vollenhoven's thesis by indicating that the pre-Grotian Catholic theorists, particularly in their concept of defense or aid (secours), had also been altruistic interventionists (La guerre comme instrument de secours ou de punition, esp. chaps. 5 and 6).

[141] For a survey of these intervening developments see especially Regout, La doctrine, pp. 94-148.

[142] Vitoria, DJB, 60; DI, III, 6 and 7; Suárez, DB, IV, 1, 5, and 7; Gentili, I, 13 (p. 58); I, 17 (p. 79); Grotius, JBP, II, 24, 8, title; II, 24, 9 and 10.

the necessity of national self-defense in the face of actual hostile attack was obvious;[143] the other three theorists would no doubt have agreed. However, wars for the recovery of property or punishment seemed to the later theorists to allow more leisure for the exploration of alternative solutions.

None of the theorists gave a central role to arbitration as a means for avoiding war, although Grotius devoted a few pages to the topic.[144] However, Gentili and Grotius urged that a formal Roman declaration of war be employed wherever possible: such a declaration lodged a specific written complaint with the enemy and allowed him thirty-three days' grace-period in which to remove the alleged cause for war.[145] If such efforts to avoid the outbreak of war failed, all was not lost in Suárez's view. He advocated that military action be suspended immediately if the enemy agreed to remove the cause for war and to pay for all damages incurred before and during hostilities.[146]

The difficulty of precisely defining the term "necessity" was illustrated by Gentili. In his view mere "necessity," not

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[143] DJB, I, 13 (p. 58).

[144] JBP, II, 23, 7-8; II, 1, 18, 21. Van Vollenhoven argues that Grotius assigned a relatively minor role to arbitration (Framework, pp. 130-135). For the views of the other three theorists on arbitration see Vitoria, DI, II, 5; Suárez, DB, II, 5; VI, 5-6; Gentili, DJB, I, 3 (pp. 15-20); I, 20 (p. 93).

[145] Gentili, DJB, II, 1 (p. 133); Grotius, JBP, III, 3, 6-14; JPr, VIII (pp. 98-103). Suárez seems to have had in mind a similar formal procedure (DB, IV, 5 and 7; VIII, 3).

[146] DB, VII, 4-5.

"extreme necessity," was requisite for recourse to war. In fact, Gentili argued, one can sometimes anticipate that the trend of events will lead to a situation of extreme necessity; in such cases one is fully justified in taking preventive action.[147] Grotius explicitly and vigorously disagreed with Gentili's position.[148]

The question of proportionality was discussed from two distinct but parallel standpoints. Since even the smallest application of military force resulted in serious damage and loss of life, the theorists argued that the cause had to pass a certain threshhold or exceed a minimum limit before it constituted a just cause for war. In their words, resort to war was not proportionate to a "slight," "trifling," "trivial," or "endurable" cause. Rather, the cause had to be "grave," "weighty," "great," "very important," or "sufficient."[149]

Proportionality also referred to an imaginative, anticipatory comparison of the harm caused by unchecked evil with the damage resulting from the effort to check or punish that evil. Grotius presented a series of three rules to aid in this calculus.[150]

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[147] DJB, I, 13 (p. 60); I, 14 (esp. p. 65).

[148] JBP, II, 1, 17.

[149] Vitoria, DJB, 14; Suárez, DB, IV, 1-2; Gentili, DJB, I, 7 (p. 35); I, 20 (pp. 93-97); Grotius, JBP, II, 24, whole chapter but esp. II, 24, 5, 7, and 9.

[150] JBP, II, 24, 5, 2-3. Rule one compared the essential goodness of two actions. Rule two compared the goodness of the effects of two actions. The third rule related all four factors in such a way that the higher proportion of good to evil always took precedence.

The two Spanish theorists, Vitoria and Suárez, specified the kinds of undesirable effect which they took into account: damage to the prince's own state, to the enemy state, to the Church, to the human race, and to the whole world.[151]

Certain qualifications of the principle of proportionality tended to limit somewhat the sphere of its applicability. In Gentili's view, proportionality in the first sense, i.e., as a minimum limit, did not apply to cases involving defense or to those involving divine matters, for "there is nothing trivial in divine matters, not one iota."[152] Suárez cautioned that a seemingly trivial cause might in fact constitute a grave cause.[153] Discussing proportionality in the second sense, Suárez noted that a king might expose a part of his territory to damage which was disproportionate in relation to the part but proportionate in relation to the whole kingdom. Moreover, he classified disproportionate damage to a neighboring state as a sin against charity rather than against justice, thus obviating the necessity of making restitution for excessive damages.[154]

Closely related to the concept of proportionality in the second sense was the issue of reasonable hope of success. Like the proportionality-principle, "reasonable hope of success" presupposed an anticipatory assessment of a particular war. In this case, however, the outcome of the war was taken as an index of relative damages: "reasonable hope" was a shorthand way of saying that to lose a war waged for a just cause was to do more harm to justice than to injustice. Such a preponderance of evil over good effects was obviously considered to be disproportionate.[155]

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[151] Vitoria, DJB, 33 and 48; De potestate civili, 13 (trans. by Gwladys L. Williams in Scott, Spanish Origin, Appendix C, p. lxxxii); Suárez, DB, IV, 8.

[152] DJB, I, 7 (p. 35).

[153] DB, IV, 2.

[154] Ibid., IV, 9; IV, 8. On the significance of the distinction between justice and charity in Suárez, see Pereña Vicente, La guerra, I, 183-184.

Suárez, who provided the most explicit treatment of the issue, specifically denied that the reasonable-hope criterion applied to defensive wars: such wars were in his view matters of necessity, not choice.[156] However, both he and Grotius required that a reasonable hope of success precede the launching of an offensive war. For Suárez a fifty-fifty chance of victory was sufficient;[157] Grotius was somewhat more stringent, arguing that "he who wishes to avenge crimes by armed force ought to be much more powerful than the other party."[158]

Although none of the theorists systematically considered the relation of justice to success in war, two briefly touched on the topic. Gentili vehemently denied that victory in war was correlated with justice of cause. In his view, the unjust cause frequently triumphed both in legal proceedings and in war. Gentili's response to this tragic state of affairs was twofold. On the theoretical level, he consoled his readers with the philosophical affirmation that all sin would ultimately be punished. On the practical level, Gentili formulated a policy-recommendation that was strictly prudential: the responsible ruler, said he, should anticipate possible threats to success and forestall possible injustice by taking preventive action against such projected perils.[159] In contrast, Grotius had a somewhat more profound trust in divine providence. Phrasing himself with infinite care, he ventured the opinion:

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[155] Suárez, DB, IV, 10.

[156] Ibid. Grotius referred to a parable of Jesus in which a king, hopelessly outmanned by his enemy, prudently offered peace to forestall invasion (Luke 14:31). It is thus possible that Grotius would have disagreed with Suárez on defensive war (JBP, II, 24, 4, 1).

[157] DB, IV, 10.

[158] JBP, II, 24, 7.

> In so far as concerns the actual outcome in a majority of cases, . . . it is permissible to assert that God customarily interposes His judgement in the fortunes of war in such a way that success falls not infrequently on the side where right also lies.[160]

The later theorists also tried to define exactly what constituted a just cause for war: Was it the enemy's objective offense against justice, or was subjective guilt, or a malicious intention, also required? In analyzing the thought of Thomas Aquinas we noted that he required subjective guilt (culpa) on the part of the enemy as a just cause for war. None of the later theorists adopted Thomas' position in its entirety; two of them reflected his concern for the subjective state of the enemy.

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[159] DJB, I, 6 (p. 33); cf. III, 3 (pp. 298-299). For Gentili's policy-recommendation see DJB, I, 14 (pp. 64-66).

[160] JPr, III (p. 32). Grotius' retort to Cardinal Richelieu conveyed a similar sentiment (see above, Chap. III, n. 181).

For all four of the theorists an enemy's objective offense against justice constituted a just cause for recourse to military action. However, this apparent consensus concealed sharp differences of opinion. According to Suárez and Gentili, the enemy's persistence in wrongdoing was a clear index of his bad faith and constituted a just cause for punitive war. The attention of these two theorists was thus confined to the realm of overt action during a certain time-period.[161] On the other hand, Vitoria and Grotius argued that a merely objective offense against justice, without the additional factor of evil intent, was sufficient only to justify defensive action against the offender. Their analysis thus included regard for subjective states of mind and emphasized the possibility of good-faith errors in moral judgment.[162]

The proponents of the latter view felt obliged to explain how subjective state and objective action could fail to correspond. It was Grotius who provided the most elaborate theoretical justification. Drawing upon Greek and Scholastic distinctions, he argued that to do what was wrong in the generic sense (to adikon), or material injustice (*injustum materiale*), was vastly different from acting wrongly (*adikēma* or *to adikeîn*), or committing a formal injustice (*injustum formale*). In Grotius' view the former category of offense included "misfortunes and mistakes," for which the agent was not responsible.[163] Vitoria eschewed formal analysis, preferring to argue from examples. "Look at the fearful Indians waging unjust war against the Spaniards," he urged, "or at a sincerely mistaken Christian king who takes up arms over a disputed inheritance. Can anyone seriously claim that such persons are morally culpable and deserving of punishment?"[164]

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[161] Suárez, DB, VII, 3. On Suárez's objectivistic tendencies see Regout, La doctrine, pp. 198-199, 200, 203. Gentili, DJB, I, 21 (p. 99); III, 2 (p. 295). The views of these two theorists are quite close to H. L. A. Hart's description of "strict liability" (Punishment and Responsibility, p. 20).

[162] Vitoria, DJB, 13 ("preceding fault and wrong"); DJB, 48; DI, III, 6; Grotius, DJB, II, 23, 13; III, 11, 2-4; JPr, VII (p. 78).

Closely correlated with their views on objective offense versus subjective guilt, were the four theorists' approaches to the problem of *collective guilt*. As we noted, Thomas Aquinas strongly opposed the conception of collective guilt. None of the later just-war theorists unambiguously subscribed to the theory of collective guilt, but there were marked differences in emphasis among them.

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[163] JPr, VII (pp. 70-75); JBP, II, 23, 13. Grotius attributed the original distinction to Aristotle (*Ethics*, V, 7-9; *Rhetoric*, I, 13). For similar analysis in Thomas Aquinas see above, Chap. II, pp. 153-154.

[164] The words in quotation marks are my paraphrase of Vitoria, DI, III, 6. In his early *Commentary*, Vitoria had added a third example of innocent but unjust action: if the King of Spain justly besieged the city of Bayonne, the inhabitants of Bayonne could licitly and innocently defend themselves (*Commentary* on ST, II-II, 40, 1, 10 [Williams trans., p. cxx]).

Regout argues that Vitoria broke with the medieval just-war tradition in his insistence "that a violation of law (*droit*) which is objectively unjust and maintained with persistence *is not necessarily culpable*" (*La doctrine*, p. 183; Regout's *italics*; author's translation). In my opinion, Vitoria's position was more in continuity with the medieval tradition--at least, as represented by Thomas Aquinas--than the more objectivistic viewpoint of Suárez.

Of the four, Suárez most nearly approached the collective-guilt theory. In discussing the right to plunder or enslave an enemy, he remarked:

> The innocent form a portion of one whole and unjust state; and on account of the crime of the whole, this part may be punished even though it does not of itself share in the fault.[165]

Similarly, Suárez argued that an entire collective was liable to ecclesiastical censure in any of three circumstances: (1) if the head of the community committed a crime; (2) if the public council or senate of the collective was responsible for a crime; or (3) if a majority of citizens from the community committed a crime and the head of the community either expressly or tacitly neglected to punish it.[166] Gentili's conception of collective responsibility, derived from the medieval civil-law tradition, was virtually identical with the position of Suárez.[167]

The mature Vitoria[168] and Grotius argued passionately for the individuation of both guilt and punishment.[169] At the empirical level Vitoria contended that "in the majority of cases" soldiers who fought for an unjust cause did so in good faith.[170] A hundred years later Grotius sought to demolish the theoretical foundations of the collective-guilt theory.

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[165] Suárez, DB, VII, 12.

[166] Suárez, De censuris, XXXVI, 2, 5; Latin text cited by Pereña Vicente, La guerra, II, Appendix IV, pp. 313-314; cf. ibid., I, 285-287. That Suárez did not espouse an unqualified theory of collective guilt is evident from DB, VII, 10 and 16.

[167] DJB, I, 21 (pp. 99-104). Qualifications of the collective-guilt conception can be found in DJB, I, 21 (pp. 99-100); III, 2 (p. 295); and III, 8 (p. 325).

[168] In his early work De potestate civili, Vitoria seems to have accepted the collective-guilt theory:

> Properly speaking, no one may be punished for another's wrong. . . .
>
> . . . The true reason is that an obligation to punish arises from desert (ex merito); and desert is something personal, since it has its origin in the will, than which nothing is more peculiarly ours.[171]
>
> Guilt . . . attaches to the individuals who have agreed to the crime, not to those who have been overmastered by the votes of others.[172]
>
> No one may rightly be killed because of ill-fortune--for example, those who take sides under compulsion.[173]

> "The State as a whole may rightfully be punished for the sin of the monarch. Wherefore, if any king make unjust war upon another ruler, the injured party may plunder and make lawful war upon and slay the subjects of the unjust king, even if all these subjects be innocent; for when the king has once been set up by the State, any immoderate act of his is charged against the State (De potestate civili, 12 [Williams trans., pp. lxxx-lxxxi]).

[169] Both writers allowed for the despoiling or enslavement of innocent enemy subjects under certain circumstance, but they carefully avoided calling such action "punishment" (Vitoria, DJB, 41-42; Grotius, JBP, III, 13, 2; III, 14, 1-2).

[170] Vitoria, DJB, 48.

[171] Grotius, JBP, II, 21, 12, title and text.

[172] Ibid., II, 21, 7, 2.

[173] Ibid., III, 11, 3, title (punctuation slightly altered).

> It is not sufficient that by a sort of fiction the enemy may be conceived as forming a single body.[174]

In addition to refining the concept of moral responsibility, the later theorists sought to clarify certain issues related to knowledge. Specifically, they asked whether a just cause of war had to be unambiguously clear or whether a degree of uncertainty could attach to it.

Among the theorists there was a wide spectrum of opinion on the issue of probable or certain cause. Gentili's position was the least restrictive: he argued that both sides might legitimately go to war "if it is doubtful on which side justice is, and if each side aims for justice."[175] Within the treatise "On War" Suárez devoted an entire section to analyzing the question: "What certitude as to the just cause of war is required in order that war may be just?"[176] He concluded that at the theoretical level certainty was not required; rather, a more probable cause was sufficient to constitute a just cause.[177]

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[174] Ibid., III, 11, 16, 2. Grotius' position on collective guilt stands in apparent contradiction to certain statements of Paul Ramsey concerning counter-insurgency warfare. See "How Shall Counter-Insurgency War Be Conducted Justly?" in Just War, pp. 435-436.

[175] DJB, I, 6 (p. 32).

[176] DB, VI, title.

[177] Ibid., VI, 2. For the socio-political context of Suárez's view see Pereña Vicente, La guerra, I, 223, 261, 268. Vanderpol criticizes Suárez's probabilism (La doctrine scolastique, pp. 254-256). In contrast, Regout attempts to re-interpret and defend the Suarezian position (La doctrine, pp. 210-220).

This conclusion might not have been directly contradicted by Vitoria, but the Spanish Dominican emphasized restriction rather than permission. Frankly admitting that at times there were "apparent and probable reasons on both sides,"[178] Vitoria contended that the proper course of action in such "doubtful" cases was either to arrange a compromise, or, failing in that effort, to preserve the status quo intact.[179] Even more restrictive was the position of Grotius, who stipulated that causes of war must be "perfectly evident" and argued that "in cases of doubt we must refrain from war."[180]

Closely correlated with the later theorists' views on moral responsibility and intellectual certainty were their answers to the question: Can a war have a just cause on both sides or only on one side? Because he accepted strict liability and allowed war for uncertain causes, Gentili was logically compelled to adopt the heterodox standpoint: Yes, "war may be waged justly by both sides."[181] There were also cases, according to Gentili, where war is "just on one side, but on the other is still more just."[182] In contrast, Vitoria formulated the position which came to predominate in sixteenth- and seventeenth-century discussions of just war: objectively speaking, he declared, no war can be just on both sides; however, in a given war, one side may have an objectively just cause, while at the same time the other side has a subjectively just cause in the sense that it is sincerely and unavoidably mistaken. To quote Vitoria's own words,

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[178] DJB, 27.

[179] *Ibid.*, 27-30. Vitoria envisioned the specific case of a dispute over territory. He argued that in doubtful cases the territory should remain in the hands of the de facto possessor. If it had no de facto possessor and the case was doubtful, the territory should be divided. This solution did not provide a complete answer for the situation in which doubt existed on one side and certainty on the other, as Vitoria himself realized (DJB, 28).

[180] JBP, II, 23, 13 and 6, title.

[181] DJB, III, 3 (p. 299); cf. I, 6 (pp. 31-32).

> It is not incongruous to assert that there is a just war on both sides when on the one side there is right (_jus_) and on the other invincible ignorance.[183]

In rather perfunctory fashion Suárez admitted the possibility of invincible ignorance. However, his primary stress was on the logical absurdity of two simultaneous and contrary rights (_iura_).[184] On the other hand, Grotius--with his greater sensitivity to subjective factors--re-stated the Vitorian position:

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[182] _Ibid_., I, 6 (p. 32).

[183] DI, III, 6 (author's translation); cf. DJB, 32, 59. For Vanderpol's reaction to this development see _La doctrine scolastique_, pp. 265-275. In two passages Vitoria attempted to specify the precise meaning of the phrase "invincible ignorance":

> "For invincible ignorance it is enough that the man bestowed human diligence in trying to learn" (DI, II, 9).

> "It is possible for persons to err vincibly and intentionally. For a good act the mere opinion of someone does not suffice; rather, his opinion must attain the standard of a wise man's judgment, as book two of [Aristotle's] _Ethics_ says" (DJB, 20; author's translation).

Thomas' conception of "invincible ignorance" was noted above, Chap. II, p. 154.

[184] DB, VII, 19; IV, 1.

> It may actually happen that neither of the warring parties does wrong. No one acts unjustly without knowing that he is doing an unjust thing, but in this respect many are ignorant. Thus either party may justly, that is in good faith, plead his case. For both in law and in fact many things out of which a right arises ordinarily escape the notice of men.[185]

In addition, Grotius contributed two original refinements to the discussion of justice on one or both sides of war. If one were to define justice in the Roman or legal sense of "official" rather than in the moral sense of "right," he noted, then a war could be called just on both sides if legally declared by the rulers on the two sides.[186] Second, Grotius argued that from the moral standpoint a war might be unjust on both sides.

> If we are referring to the state or magistrate authorizing a war, we are more likely to find both belligerent parties in the wrong than we are to find right on both sides. Take for example a case in which a debt of five is owed, and one party seeks to collect ten while the other offers no payment whatsoever. For we have here a situation identical with that created by two mutually contradictory statements, which may both be false at one and the same time, whereas they cannot both be true simultaneously.[187]

The views of the four theorists on the question of neutrality can easily be anticipated, if one recalls that all four were vigorously interventionist. The issue was not even raised by Vitoria and Suárez. Gentili approximated the concept in discussing trade during war-time; but as his biographer observed:

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[185] JBP, II, 23, 13, 2; cf. JPr, VII (pp. 82-83).

[186] JBP, II, 23, 13, 5; cf. I, 3, 4; III, 3, 1; III, 4, 1-4; III, 10, 1-3.

[187] JPr, VII (p. 83). This is the only indication in the five theorists under study that lack of proportionality, when carried beyond a certain point, vitiates the justice of a cause.

> Like the word 'neutralitas' the idea which it conveyed was very little thought of in Gentili's day. He too proved himself in "De Iure Belli" to be an advocate of intervention-politics.[188]

Grotius also believed that justice should be promoted, if possible, at all times and places. In his view, non-involved states were under obligation to determine the just cause of every war and to discriminate in their treatment of the just and unjust sides. Only when the justice of the cause was seriously in doubt did Grotius countenance non-intervention.[189]

Decision-makers

All of the theorists agreed that the prince or king was the primary decision-maker in matters of war. Within this general consensus, however, there were significant differences of emphasis. It was the Spanish theologian Vitoria who provided the most detailed analysis of the princely decision-making process. He cautioned princes against snap-judgments, urging them to make "an exceedingly careful examination . . . of the justice and causes of the war." In his view such a "careful examination" was not complete until the prince had listened to "even the reasons of those who oppose the war on the grounds of equity and the good."[190] As for senators and members of the prince's council, Vitoria argued that all were bound to look into the cause of an unjust war--regardless of whether or not the king had summoned them. Otherwise such advisors shared in the prince's guilt.[191] As if to leave no room for misunderstanding, Vitoria recapitulated his argument in the following bold theses:

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[188] Van der Molen, Alberico Gentili, p. 181; cf. Gentili, DJB, II, 18 (p. 237); II, 22 (pp. 263-267).

[189] JBP, III, 17, 3, 1; II, 15, 13, 1; cf. Van der Molen, Alberico Gentili, p. 182.

> The king alone does not suffice to examine the causes of war. It is very possible for him to err, and his errors bring great evil and ruin to large numbers of people. Therefore war ought to be waged, not on the basis of the king's judgment alone, nor because of the judgment of a few persons; rather, war ought to be waged only when approved by many wise and honest men.[192]

Without discussing in detail the royal decision-making process, Grotius heartily endorsed Vitoria's views. Hesitant to offend his royal protector in France, Grotius formulated the issue in temporal rather than strictly moral terms: consultation with "wise men" was, he said, the

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[190] DJB, 21 (author's translation). Vitoria's justification for this recommendation included both ethical and religious warrants:

> "Truth and justice in moral questions are hard of attainment and so any careless treatment of them easily leads to error, an error which will be inexcusable, especially in a concern of great moment, involving danger and calamity to many, and they our neighbors, too, whom we are bound to love as ourselves" (DJB, 21).

[191] DJB, 24.

[192] Ibid. (author's translation). Vitoria almost certainly considered himself to be qualified as a royal counselor. In fact, on at least two occasions Vitoria's king, Emperor Charles V, requested his advice on Indian affairs (see above, Chap. III, n. 73).

> method of judging . . . especially employed by kings, who hardly have the time to learn or weigh thoroughly the branches of knowledge.[193]

While seeming to echo Vitoria's sentiments, Suárez radically altered the position of his Spanish predecessor. He began by agreeing with Vitoria that "the sovereign ruler is bound to make a diligent examination of the cause and its justice."[194] Continuing, Suárez noted that the prince could also submit his case to arbitrators or to prudent and learned men, if he so chose.[195] However, in Suárez's view the generals and other chief men of the kingdom were not bound to examine the causes of war, unless the prince summoned them.[196] In short, for Suárez everything rested ultimately on the decision of the prince.

If Suárez relaxed somewhat the controls on royal power to make war, Gentili virtually abolished them. He assumed rather than argued that the sovereign determined the cause of war, warning that "It is not for subjects to inquire too curiously which side took up arms with the better right."[197]

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[193] JBP, II, 23, 4; cf. the "Dedication" of On the Law of War and Peace.

[194] DB, VI, 1.

[195] Ibid., VI, 5-6. For the role of Spanish theologians as royal advisors see Pereña Vicente, La guerra, I, 81, 94.

[196] Ibid., VI, 7. Suárez did note that, according to Vitoria, such generals were bound "in charity" to examine the cause of war, but he relegated this obligation to (presumably rare) cases of necessity; cf. Pereña Vicente, La guerra, I, 249-250. In his entire discussion of royal decision-making Suárez was guided by the desire to provide a post facto justification for his king's policy in Portugal (Pereña Vicente, La guerra, I, 223, 245, 261, 268).

[197] DJB, I, 25 (p. 126).

The question of decision-making by common citizens or soldiers is generally referred to as the problem of "conscientious objection." All four theorists agreed that conscience set certain limits to participation in warfare, but the precise location of those limits was a matter of dispute.

As might be expected, Gentili most narrowly limited the subject's right of conscientious objection.[198] He discouraged ordinary soldiers from exceeding their competence, noting that no soldier was held legally accountable for fighting in an unjust war. Not entirely satisfied with this juridical solution, however, Gentili added that a soldier could offend in the internal forum of conscience by fighting in a war which he knew to be unjust. Thus "the Indians did not rightly fight for a king who was waging war unjustly."[199]

In Suárez, too, the right of conscientious objection was rather severely limited. In deference to tradition Suárez conceded that soldiers should refuse to participate in a war whose injustice was "evident" to them.[200] However, his main emphasis was on the soldier's lack of obligation to investigate the cause of war and on his presumptive duty to obey the prince. By way of illustration, Suárez described four possible cases. In the first hypothetical case the soldier had purely negative doubts, that is, he lacked the information requisite for a moral judgment. According to Suárez, such a soldier was under no obligation to seek more information but could in good conscience follow his prince.[201]

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[198] See n. 197 above.

[199] DJB, I, 25 (p. 126; author's translation); cf. I, 25 (pp. 125-127).

[200] DB, VI, 8.

In cases 2, 3, and 4 the soldier had positive doubts: he was aware of plausible arguments on both sides. Suárez counseled such a soldier to seek more information by consulting with "prudent and conscientious men."[202] In case 2 such consultation led to certainty that the war was either just or unjust. The soldier in case 3 concluded that one cause was more probably just than the other and acted in accordance with the probability. In case 4 the soldier decided, even after the inquiry, that both sides "contain an equal probability." He was therefore free in good conscience to obey his prince.[203]

There was a clear systematic principle at work in Suárez's casuistry. He supported the presumptive duty to obey by arguing that disobedience to one's prince might entail "serious and general misfortune," whereas obedience, at worst, could only involve the commission of a minor injustice. Thus the morally "safer" course was clearly to follow the orders of one's prince.[204]

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[201] DB, VI, 9 and 12.

[202] DB, VI, 12. Presumably such men would have been Spanish priests and theologians, who normally supported the Crown.

[203] Ibid.

[204] DB, VI, 8-9. The twentieth-century moralist Ross has designated such presumptive obligations "prima facie duties" (W. D. Ross, The Right and the Good [Oxford: Clarendon Press, 1930], pp. 19-20).

Writing about forty-five years before Suárez, Vitoria had allowed slightly wider latitude for conscientious objection. On several issues Vitoria's viewpoint was essentially the same as that of Suárez; indeed, Vitoria was the source from which Suárez had drawn many of his arguments. For example, Vitoria contended that the common soldier had no obligation to examine the cause of war. In support of this assertion he adduced both the prince's need for secrecy and the common soldier's lack of political power.[205] Moreover, in Vitoria's view the presumption was in favor of obeying the prince, even in cases of doubt.

> If subjects in a case of doubt do not follow their prince to war, they expose themselves to the risk of betraying their State to the enemy, and this is a much more serious thing than fighting against the enemy despite a doubt.[206]

However, Vitoria strongly emphasized the potential injustice of rulers and unequivocally asserted the soldier's obligation to recognize such injustice.

> The proofs and tokens of the injustice of war may be such that ignorance would be no excuse even to the subjects who serve in it. This is clear because such ignorance [on the part of subjects] might be deliberate and adopted with evil intent toward the enemy.[207]

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[205] DJB, 25. On the subject's not being obligated to examine the cause of war see Stratmann, Church and War, p. 77.

[206] Ibid., 31. In Vitoria's opinion, soldiers who remained in doubt about the justice of a war were obligated to follow their prince into war, especially in a defensive war, but also in an offensive war (ibid).

[207] Ibid., 26; cf. 22. In his earlier Commentary Vitoria had formulated the problem in terms of obedience to God rather

To clinch his point, Vitoria cited three examples which would undoubtedly have impressed his readers. If subjects were not responsible for participating in the injustice of their leaders, he argued, then

> unbelievers would be excused when they follow their chieftains to war against Christians. . . . Also, the soldiers who crucified Christ, ignorantly following Pilate's order, would be excused. In addition, the Jewish mob would be excused which was led by the elders to shout "Away with Him, crucify Him."[208]

Applying Thomas' general theory of conscience to the problem of war, Vitoria made a final point concerning conscientious objection: even a mistaken conscience was to be obeyed.

> Subjects whose conscience is against the justice of a war may not engage in it whether they be right or wrong. This is clear, for "whatsoever is not of faith is sin" (Romans 14:23).[209]

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than man, instead of simply in terms of refusing to commit injustice.

> "If it is evident that the war is unjust, or if this is known to be the case, or if the subjects are conscious that the war is unjust, they may not fight, even when the prince exercises compulsion upon them. The reason for this is that such a prince is committing a mortal sin, and one must obey God rather than obey him" (*Commentary* on ST, II-II, 40, 8 [Williams trans., p. cxviii]).

In the same *Commentary* Vitoria had dramatized the meaning of "deliberate ignorance":

> "If the ignorance is crass and, so to speak, wilful, it does not serve as an excuse. *Accordingly, I* hold that if there are indications that the war is not just,--[if, for example,] I am in doubt, but close my eyes, saying, 'What do I know of the matter?' because I feel affection for my king,--then I will not be acquitted of sin" (ibid.; Williams trans., p. cxix; slightly revised).

[208] DJB, 26 (CIL trans.; slightly revised).

[209] DJB, 23; cf. Thomas Aquinas, ST, I-II, 19, 5: "Whether the will is evil when it is at variance with erring reason."

In his early treatise On the Law of Prize Grotius reproduced Vitoria's views essentially intact.[210] The lengthy analysis in The Law of War and Peace, written about twenty years later, both reiterated traditional emphases and expanded the right of conscientious objection. On several issues Grotius agreed with one or more of his predecessors. For example, he asserted that God must be obeyed rather than men; with this assertion none of his predecessors would have disagreed.[211] Following Vitoria, Grotius argued that a citizen's subjective conviction was sufficient ground for conscientious objection to war; objective proof of the war's injustice was not required.[212]

In his discussion of doubtful cases, however, Grotius allowed even greater scope for conscience than had Vitoria. First, he resurrected the opinion of "our countryman Adrian, who was the last Pope of Rome from north of the Alps."[213] Adrian had argued that in cases of doubt the subject ought to abstain from war. In their discussions of conscientious objection Vitoria and Suárez had explicitly rejected Adrian's view.[214] Without unequivocally adopting Adrian's position on doubtful cases, Grotius indicated strong sympathy for it.[215]

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[210] JPr, VII (pp. 77-80, 80-82).

[211] JBP, II, 26, 3, 1.

[212] Ibid., II, 26, 3, 5.

[213] Ibid., II, 26, 4, 4.

[214] Vitoria, DJB, 30-31; Suárez, DB, VI, 9. The passage in Adrian was Quaestiones Quodlibeticae, II.

Second, Vitoria and Suárez had argued that expediency often prevented a prince from making public the reasons for his war-policies. Grotius' retort bordered on cynicism:

> Although this may be true of persuasive causes, it is not true of justifiable causes, which ought to be clear and open and, further, should be such as may and ought to be openly set forth.[216]

To this response Grotius appended a polite warning: the prince who cannot clearly explain the cause of a war may find that his doubtful soldiers lack enthusiasm for the war-effort.[217]

When Grotius described the moral choice involved in a doubtful case, both his account and his conclusion diverged from those of Vitoria and Suárez. According to both Spanish theorists it was morally safer to fight despite a doubt than to betray one's country. Grotius saw the matter differently:

> Disobedience in things of this kind, by its very nature, is a lesser evil than manslaughter, especially than the slaughter of many innocent men.[218]

Fourth, Grotius recommended specific governmental provisions for dealing with conscientious objection in doubtful cases. One of his concrete proposals was that the "good magistrate" should impose on conscientious objectors "extraordinary taxes rather than military service."[219] It was not clear whether the other theorists envisioned the establishment of such administrative alternatives.

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[215] JBP, II, 26, 4, 4-8.

[216] Ibid., II, 26, 4, 5.

[217] Ibid., II, 26, 4, 6-7.

[218] Ibid., II, 26, 4, 5 (italics added). For a discussion of the problems involved in describing a human act see the works cited above, Chap. II, n. 400.

In concluding his discussion of conscientious objection, Grotius made a special plea on behalf of Christian pacifists. Perhaps thinking of pacifists among the Dutch Remonstrants and Mennonites, he urged:

> Even if there can be no doubt respecting the cause of war, still it does not seem right that Christians should be compelled to serve against their will; the reason is that to refrain from military service, even when it is permissible to serve, is the mark of a somewhat greater holiness, which was long demanded from ecclesiastics and penitents, and recommended in many ways to all other persons.[220]

Enumeration of Specific Causes

Non-religious causes

The following synoptic table summarizes the views of the four later theorists on specific non-religious causes for war. The word "yes" indicates that the offense in question was considered a just cause for war; the word "no," the opposite. If a particular cause was not discussed by a theorist, a hyphen appears.

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[219] Ibid., II, 26, 5, 1.

[220] Ibid., II, 26, 5, 2. Grotius' plea seems to presuppose that some form of conscription existed in the Netherlands of his day. On the role of ordinary citizens in the Dutch revolt during the late sixteenth century see Montross, War, pp. 247-248, 258. For evidence that provincial militias existed in the Low Countries see above, Chap. III, p. 262.

		Vitoria	Suárez	Gentili	Grotius
1.	Extension of empire or aggrandizement of the prince	no	no	no	no
2.	Injury to the reputation or honor of the prince or state	yes	yes	yes	probably not
3.	Natural slavery or inferiority of primitive peoples	no	no	no	no
4.	Inability of primitive peoples to govern themselves	perhaps	no or very seldom	--	sometimes
5.	Sexual immorality opposed to law of nature, e.g., homosexuality, bestiality	no	no	yes	yes
6.	Human sacrifice, if victims innocent	yes	yes	yes	yes
7.	Killing of innocent persons for cannibalistic purposes	yes	yes	yes	yes
8.	Denial of the right of innocent passage through territory	yes, with one exception	yes, with one exception	sometimes	yes
9.	Denial of free trade or the freedom of the sea	yes, with one exception	yes, with one exception	sometimes	yes
10.	Trade with an enemy belligerent	--	--	yes	sometimes

XUM

		Vitoria	Suárez	Gentili	Grotius
11.	The practice of piracy	--	--	yes	yes
12.	Violation of a treaty	--	--	sometimes	sometimes
13.	Harming an ambassador	--	yes	yes (implied)	yes
14.	Growth in the power of a traditional enemy	--	--	yes	no[221]

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[221] Sources for the above positions of the theorists are indicated according to the above enumeration of causes:

1. Vitoria, DJB, 11-12; Suárez, DB, IV, intro.; Gentili, DJB, I, 7 (p. 34); Grotius, JBP, II, 22, 3, 2.
2. Vitoria, DJB, 19, Suárez, DB, IV, 3; Gentili, DJB, I, 18 (p. 84); Grotius, JBP, I, 2, 8, 7; II, 22, 16; II, 22, 17, 1.
3. Vitoria, DI, I, 4 and 20-24; Suárez, DB, V, 5; Gentili, I, 12 (p. 54); Grotius, JBP, II, 22, 10, 2.
4. Vitoria, DI, III, 18; Suárez, DB, V, 5; Grotius, JBP, II, 22, 9; II, 22, 10.
5. Vitoria, DI, II, 16; Suárez, DB, V, 1; Gentili, DJB, I, 25 (p. 122); Grotius, JBP, II, 20, 40, 4; II, 20, 44, 2.
6. Vitoria, DI, III, 15; Suárez, DB, V, 2; *De fide*, Disp. XVIII, IV, 4; Gentili, DJB, I, 25 (p. 122); Grotius, JBP, II, 20, 47, 5.
7. Vitoria, DI, III, 15; Suárez, DB, V, 5; Gentili, I, 25 (p. 122); Grotius, JBP, II, 20, 40, 3.
8. Vitoria, DI, III, 2 and 10; Suárez, DB, IV, 3; V, 2; *De fide*, Disp. XVIII, 1, 7; Gentili, DJB, I, 19 (pp. 86-87); Grotius, JBP, II, 2, 12, 1-4.
9. Vitoria, DI, III, 3 and 10; Suárez, DB, IV, 3; *De legibus*, II, 19, 7; *De fide*, Disp. XVIII, 1, 7; Gentili, DJB, I, 19 (pp. 88-91); I, 21 (pp. 101-103); Grotius, JBP, II, 2, 3; II, 2, 12, 5; II, 3, 12; JPr, XII (pp. 216-282).
10. Gentili, DJB, I, 21 (pp. 101-103); II, 22 (pp. 266-267); Grotius, JBP, III, 1, 5.
11. Gentili, DJB, I, 25 (p. 124); Grotius, JBP, II, 20, 40, 3.
12. Gentili, DJB, III, 25 (pp. 427-433, but esp. 430-432); Grotius, JBP, III, 20, 27-41.
13. Suárez, *De fide*, Disp. XVIII, I, 4; *De legibus*, II, 19, 7; Gentili, *De legationibus*, I, 3; II, 13 and 18; Grotius, JBP, II, 18, 1 and 11.

Several of these specific causes for war require brief comment. In their refusal to accept cause 1 above, the theorists were re-stating a traditional Augustinian emphasis.[222] However, their rejection of wars fought for national or magisterial self-aggrandizement was also an implicit critique of Machiavelli, who allowed war for reasons of state alone.[223]

Causes 3 and 4 mirrored sixteenth-century debates about the relation of Aristotle and the American Indians. All four theorists were concerned to deny that the Indians were "natural

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14. Gentili, DJB, I, 14 (pp. 61-66); Grotius, JBP, II, 1, 17.

Some of these issues were touched upon briefly in "The Discussion of Cause in General Terms," but I thought it helpful to include all major specific causes in one synoptic table.

[222] Augustine, *De civitate Dei*, 4, 6.

[223] *The Prince*, chaps. 12-14, 26; *Discourses*, I, 21; II, 16-20. For the relation of Machiavelli and Vitoria, see Pereña Vicente, *La guerra*, I, 132-135. Of the four later theorists only Gentili dared to mention Machiavelli by name. Indeed, in *De legationibus* Gentili argued that his Italian compatriot had written *The Prince* not "to instruct the tyrant but by revealing his secret counsels to strip him bare" (cited from Van der Molen, *Alberico Gentili*, p. 317, n. 223). It is probable that Grotius attacked Machiavelli by attributing his views to "Carneades" (JBP, Prolegomena, 5, 16-18; cf. Van Vollenhoven, "Grotius and Geneva," pp. 6-7).

Only Grotius lived to see Hobbes' systematic restatement of the power-politics view. He was immediately wary:

> "I saw the book *De Cive*. What he says about kings is acceptable. *However*, I cannot approve the foundations upon which he builds his opinions. He thinks that by nature there is war among all men, and he holds other views not agreeing with ours. . ." (Letter of April 11, 1643, to Willem de Groot; cited by Van Vollenhoven, "Grotius and Geneva," Appendix P; my translation; cf. Van Vollenhoven, *ibid*., pp. 19, 22-23).

The political views of both Machiavelli and Hobbes were briefly discussed above (Chap. III, pp. 217-218).

XUM

slaves," a thesis advanced by John Major and Sepúlveda.[224] However, Vitoria and Grotius wished to allow for possible humanitarian intervention if the Indians proved incapable of supplying their own needs.

By rejecting cause 5 as a just cause for war, Vitoria and Suárez hoped to curb the excesses of their countrymen, the Spanish conquistadores.[225] Not having lived in Spain, Gentili and Grotius were perhaps less sensitive to potential abuses of this cause.

In a general way, causes 6 and 7, as well as the views of Gentili and Grotius concerning cause 5, illustrated the far-reaching right of intervention asserted by the theorists. As noted above, the definitions of "defense" and "punishment" were almost infinitely expandable.

The theorists' differences of opinion concerning cause 8 reflected basic tendencies in their points of view. Grotius argued that even enemies should be allowed innocent passage. Gentili, ever on guard to prevent threats to the state, asserted the opposite on the ground that "one ought always to fear one's enemies."[226] In contrast, Vitoria and Suárez advocated an exception to the right of innocent passage on an entirely different basis--the suspension of the jus gentium because of a more authoritative religious pronouncement. Both argued that the Pope could assign responsibility for the evangelization of New-World territories to specific European powers. Once assigned, each territory became an exclusive sphere of influence, inaccessible to nations other than the assignee.

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[224] For the views of Major and Sepúlveda see Hanke, Spanish Struggle, pp. 183-184, 113-115. On the issue of Aristotle's relevance to the conquest of the New World see Lewis Hanke, Aristotle and the American Indians: A Study of Race Prejudice in the Modern World (Chicago: Henry Regnery Company, 1959).

[225] According to the eyewitness account of one of Cortés' soldiers, his captain explained to the Mexican Indians at Cholula that

> "he had been sent to these countries to give them warning and to command them not to worship idols, nor sacrifice human beings or eat their flesh, or practice sodomy or other uncleanness" (Hanke, Spanish Struggle, p. 6).

In an era of burgeoning mercantilism the question of free trade was a matter of passionate concern; it is with this issue that causes 9 and 10 were concerned. Again in their discussions of cause 9 Vitoria and Suárez asserted the Pope's right to assign missionary spheres of influence. Grotius, however, strenuously objected when this alleged right was employed by the Portuguese to exclude his fellow-Dutchmen from the East Indian trade.[227] Commercial relations in Europe were also a subject of dispute. While supporting free trade in principle, Gentili bitterly condemned the Hanseatic cities' commerce with England's Spanish archenemy (causes 9 and 10).[228] In one of the rare references to contemporary affairs in The Law of War and Peace Grotius coolly noted that the English had been inconsistent on the issue of free trade. During Holland's bitter war with the Dutch, he reported, Queen Elizabeth had warned the Dutch "not to detain English ships which had sailed for Spanish ports."[229] A few years later, however, the English themselves became enemies of Spain and began to detain Hanseatic ships bound for Spain--a policy which Grotius termed "interference without any clear right."[230]

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[226] DJB, I, 19 (p. 87).

[227] JPr, XII (esp. pp. 222-223; 244-245; 257-258).

[228] DJB, I, 21 (pp. 101-103); II, 22 (pp. 266-267).

Thus it is clear that on the natural level the four later theorists were in agreement concerning some causes,[231] differed theoretically but not practically on others,[232] and were in basic disagreement on still others.[233]

Religious causes

The following table summarizes the four theorists' views on religious causes for war.[234]

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[229] JBP, III, 1, 5, 4 (CIL trans., n. 1, pp. 603-604).

[230] *Ibid.* (CIL trans., p. 604, n. 1).

[231] E.g., causes 1, 3, 6, 7, and 13.

[232] E.g., causes 4 and 5.

[233] E.g., causes 8, 9, 10 and 14.

[234] A problem of categorization arises at this point. Two of the following causes would have been classified by the theorists under the category of "natural religion," specifically, causes 7 and 8. In accordance with twentieth-century usage I have classified "natural" causes which deal with deity as "religious" causes.

		Vitoria	Suárez	Gentili	Grotius
1.	Refusal to accept the Christian faith	no	no	no	no
2.	Papal enforcement of the law of nature among unbelievers	no	no	--	no
3.	Harassment or persecution of Christian missionaries or teachers by unbelievers	yes	yes	--	yes, if it happens only because of their Christian faith
4.	Forcible prevention of unbelievers' conversion to Christianity by other unbelievers	yes	yes	--	--
5.	Persecution of Christians by unbelievers	yes	yes	yes	yes, if it happens only because of their Christian faith
6.	Heresy	--	yes, vs. a deposed heretical king	no	no
7.	Idolatry	no	no	no	yes, if the idols are morally evil
8.	Atheism, total lack of religious belief	--	--	yes	yes[235]

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[235] The sources for these religious causes are the following:

1. Vitoria, DI, II, 7; DJB, 10; Suárez, DB, V, 1; De fide, Disp. XVIII, II, 6; Gentili, DJB, I, 25 (p. 125); Grotius, JBP, II, 20, 48; JPr, XII (pp. 221-222).

The agreement of the four theorists concerning cause 1 reflected their fundamental commitment to religious liberty. On this point Thomas Aquinas rather than Hostiensis carried the day.[236] During the sixteenth and seventeenth centuries this affirmation of religious toleration was especially relevant to the Christians' relations with the Moslems of North Africa and the Indians of Latin America and the East Indies.

In denying the legitimacy of cause 2 Vitoria and Suárez were consciously contradicting the view expressed by the thirteenth-century canonist, Innocent IV.[237] The immediate context of their position was undoubtedly Spanish colonialism: the Spanish theorists wished to curb the zeal of the *conquistadores*, who would have been only too glad to "punish" the Indians' sins against the natural law. Grotius, on the other hand, was primarily concerned to deny papal jurisdiction over such territories as the East Indies, where the Dutch had commercial ambitions.

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2. Vitoria, DI, II, 15-16; Suárez, DB, V, 1 and 4; *Defensio fidei*, III, 5, 4-22; Grotius, JPr, XII (p. 223).
3. Vitoria, DI, III, 9-12; Suárez, DB, V, 7; Grotius, JBP, II, 20, 49.
4. Vitoria, DI, III, 12; Suárez, DB, V, 7.
5. Vitoria, DI, III, 12-13; Suárez, DB, V, 3 and 7; Gentili, DJB, I, 9 (p. 40); I, 12 (pp. 56-57); Grotius, JBP, II, 20, 49; II, 15, 12.
6. Suárez, *Defensio fidei*, VI, 4, 19; Gentili, DJB, I, 10 (pp. 45-46); Grotius, JBP, II, 20, 50.
7. Vitoria, DI, II, 16; Suárez, DB, V, 1-2; Gentili, DJB, I, 25 (p. 125); Grotius, JBP, II, 20, 47, 4.
8. Gentili, DJB, I, 25 (p. 125); I, 9 (p. 41); Grotius, JBP, II, 20, 46.

[236] See Chap. II, pp. 142, 146.

[237] See Chap. II, pp. 142-143.

Causes 3 to 5 transposed the concept of "the innocent" to the religious level, applying it specifically to Christians. Pagan harassment of believers or would-be believers was thus interpreted as a just cause for war--either on the ground that innocent persons anywhere in the world could lawfully be defended ("defense") or because harming the innocent constituted a universally-punishable offense ("punishment"). For Vitoria and Suárez these three religious causes referred primarily to the Spanish missionary-effort in the New World. Both Christian missionaries and their converts became innocent persons to be protected.[238] The secondary focus of Vitoria and Suárez, Christian relations with Moslems, was the primary concern of Gentili and Grotius. The two Protestant lawyers were genuinely fearful of Turkish aggression against Europe.

The views of the theorists on cause 6, heresy, split strictly along confessional lines. When Suárez wrote of military action against a deposed heretical king, he referred to none other than Gentili's sovereign, King James I of England. The Protestant writers, accustomed to hearing their beliefs characterized as "heresy" by Catholics, unequivocally asserted the right of heretics to enjoy religious liberty.

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[238] It is at least questionable whether the Spanish theorists would have accorded similar missionary rights to the Indians and their hypothetical converts in Spain. Indeed, Christians who converted to the religion of the Incas, for example, would have qualified as "apostates" and as such would have been subject to compulsory measures by the Christian authorities who ruled them.

In their positions on causes 7 and 8 the later theorists revealed at least three divergent concerns. Vitoria and Suárez argued that the Old Testament evidence on warfare against idolaters was inconclusive: thus they hoped to deprive the conquistadores of yet another pretext for war with the Indians. In Gentili's view atheists denied their nature as human beings and therefore deserved punishment "to avenge our common nature."[239] Even Grotius, perhaps the most tolerant of the four theorists, accepted atheism and certain kinds of idolatry as just causes for war. However, the basis of his position was ultimately moral rather than religious. Grotius fervently held that belief (1) in deity and (2) in deity's concern for mankind was fundamental both to morality in general and to social justice in particular.[240]

We conclude, therefore, that in their views on causes for religious war the four later theorists sometimes agreed fundamentally,[241] sometimes agreed but for different reasons,[242] sometimes differed but on diverse grounds,[243] and sometimes fundamentally disagreed.[244]

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[239] There is some evidence that Gentili doubted the existence of full-fledged atheists. At one point he argued:

> "No nation exists which is wholly destitute of religion. Name me such a nation, if you can" (DJB, I, 9; p. 41).

[240] JBP, II, 20, 44 and 46. This position sets in proper perspective a famous statement made by Grotius in the Prolegomena to On the Law of War and Peace:

> "What we have been saying would have a degree of validity even if we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to Him" (Prolegomena, 11).

Far from entertaining this "secular" viewpoint, Grotius regarded it as a proper cause for war!

As noted above, Thomas Aquinas described political and religious causes for war in precisely analogous terms. A close inspection of the two synoptic tables reveals that the same parallel reappeared in the just-war theories of Vitoria, Suárez, Gentili, and Grotius. Corresponding causes at the natural and supernatural levels included the following:

	Natural		Supernatural
1.	Natural slavery (rejected)	1.	Mere unbelief (rejected)
2.	Injury to the state	2.	[Injury to the Church]
3.	Defense of innocent fellow-citizens or allies	3.	Defense of innocent fellow-Christians
4.	The right of innocent passage	4.	The right of Christian missionaries to evangelize freely
5.	Violation of a treaty	5.	Heresy (= a breach of faith with the Church).

Of the four theorists, only Suárez explicitly discussed the relationship of political and religious causes. Having

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[241] E.g., cause 1.

[242] E.g., causes 2, 3, 4, 5, and 8.

[243] E.g., cause 7.

[244] E.g., cause 6.

XUM

analyzed "just cause[s] for war on the basis of natural reason," he raised the question: "Can Christian princes have any just ground for war beyond that which natural reason dictates?" Suárez concluded that all suitable causes for religious war were analogous to, or ultimately reducible to, the just causes of purely secular wars. In his words,

> There is no ground for war so exclusively reserved to Christian princes that it has not some basis in, or at least some due relation to, [the] natural law.[245]

How

In contrast to Thomas Aquinas, who had devoted relatively little attention to the how of permissible war, the later theorists emphasized the importance of the how-question. Vitoria, Suárez, Gentili, and Grotius introduced their discussions of the topic in the following words:

> The fourth question is about the law of war, namely, what and how much is lawful in a just war.[246]

> Third, [in order for a war to be honorable,] the proper mode (debitus modus) must be observed as well as equality in its beginning, prosecution, and victory.[247]

> Now just as you ought to observe justice in beginning a war, so you should wage it and carry it on

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[245] DB, V, 6; cf. the titles of DB, IV and V. The analogous relationship between the political and religious causes for war discussed by Thomas Aquinas was indicated above, Chap. II, pp. 125-127.

[246] Vitoria, DJB, 15 (author's translation).

[247] Suárez, DB, I, 7 (author's translation).

> justly. For it is not enough to have a just cause for beginning a war, unless it is also waged with justice.[248]
>
> We have considered who may wage war and for what causes it is lawful to fight. It follows that we should consider what is lawful in war and how much and by what modes (quibus modis).[249]

As these quotations suggest, the four theorists analyzed the how-question primarily in terms of means rather than intention.

Intention

The diminishing role of "right intention" was symbolized by the fact that only three of the later theorists paid explicit attention to the problem. One of these three, Gentili, denied that he was competent to discuss the issue of intention.

> Some raise the question whether or not it is necessary for the justice of a war that the leader have a good motive [bona intentio principis], which is a problem for the theologians.[250]

Two of the "theologians" did in fact discuss the relation of right intention to just war, but both Suárez and Grotius denied that a perverse intention detracted from the justice of a war. In the opinion of Suárez it was theoretically possible for a war to fulfill all of the conditions of justice--legitimate authority, just cause, and proper means--and yet to "contain some evil element opposed to charity or to some other virtue."

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[248] Gentili, DJB, II, 1 (p. 131).

[249] Grotius, JBP, III, 1, 1 (author's translation). On the relative importance of the how-question in the four later theorists see above, nn. 7-9.

[250] Gentili, DJB, I, 7 (p. 35).

To illustrate, he noted that even a just war could "spring from hatred."[251] However, Suárez argued that such an attitude, which offended against charity but not against justice, did not render a just war unjust; consequently the offender was not bound to make restitution.[252]

The position of Grotius closely paralleled that of Suárez. In precise language that was not open to misunderstanding, the Dutch theologian and jurist asserted the irrelevance of intention to the justice of a war.

> Note that this often happens: a just cause for war indeed exists, but a vice arises in the action because of the spirit (animo) of the agent. This can occur in two ways: (1) something else, not illicit in itself, moves the spirit to a greater degree and more efficiently than right (ius) itself, for example, the desire for honor or some utility . . .; or (2) there may be present a manifestly illicit spirit, like the delight of one who gains satisfaction from another's ill without respect to what is good. . . .
>
> . . . .
>
> But these [vices of intention], where a justifying cause is not lacking, do indeed make clear the existence of sin (peccatum). Nevertheless they do not render the war itself, properly speaking, unjust. Therefore no restitution is due from such a war.[253]

In a single paragraph of his early work On the Law of Prize Grotius indicated that the agent's state of mind was at least potentially related to the means-question. Specifically, he noted that a perverse intention might "spill over" into the realm of action, producing a lack of proportionality in the use of means.

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[251] DB, VII, 21.

[252] Ibid., IV, 8; VII, 21; cf. Pereña Vicente, La guerra, I, 183-185. For evidence that this was a standard position see Regout, La doctrine, pp. 23-24.

[253] JBP, II, 22, 17, 1 and 3 (author's translation and italics); cf. JPr, IX (p. 129).

> A third fault consists in exceeding the limits [*modus*] of vengeance appropriate to the transgressor. Seneca has said that . . . the third fault is incompatible with clemency. A fourth fault arises when vengeance is inflicted in a spirit of injustice [*non justo animo*], or in other words, when neither the good of the person punished nor the common good is kept in view. The two faults last named are mentioned by that same Seneca in a single passage, [the description of an occasion on which Plato refrained from inflicting punishment and explained his self restraint in these words: 'I am angry;] I should be apt to do more than I ought and with too much pleasure' [*On Anger*, III, 12].[254]

Thomas Aquinas had treated right intention on a par with authority and cause in his basic discussions of war.[255] Within his general ethical theory the intention was accorded a central role. In the writings of the later theorists, however, the significance of right intention as a criterion of permissible war was little more than vestigial. Thomas' sixteenth- and seventeenth-century successors insisted on more externalized, objective standards for the how of permissible war.[256]

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[254] JPr, III (p. 39; the material in the third pair of brackets was supplied by the translators of the CIL ed.).

[255] ST, II-II, 40, 1; *Quodlibetum* II, 16.

[256] It is possible that the later theorists found warrant in Thomas himself for relating right intention to charity rather than to justice. The right-intention criterion would seen to have been the major reason for Thomas' including the *ex professo* discussion of just war in his treatise on charity rather than in the treatise on justice. The other two criteria, authority and

Means

In sharp contrast to Thomas Aquinas,[257] the later theorists discussed the how-question almost exclusively in terms of means. This discussion included both qualitative and quantitative dimensions: the theorists attempted to define what means were permissible, both in general and in particular; and they sought to articulate the principle of equality or proportionality between means and cause.

General issues concerning means

The following paragraphs discuss five central issues in the later theorists' analyses of the means-question. The

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just cause, were clearly considerations of justice. As we noted above, Thomas was reluctant to say that a perverse intention rendered a just war unjust. And the right-intention criterion seems to have been related particularly to the end of peace, which was conceived as an effect of charity.

If this analysis is correct, then the later theorists' minimizing of right intention did not necessarily contradict Thomas' viewpoint. However, it did reveal a difference in emphasis between Thomas and the four later theorists: whereas Thomas had stressed *moral virtue*, the later theorists, at least in their discussions of war, gave primary attention to *morality in social relations*. Whereas Thomas had given primacy to the supernatural virtue of *charity*, the later theorists made the natural virtue of *justice* the central consideration. In discussing the how of permissible war Thomas relied almost exclusively on an *ethic of disposition* (*Gesinnungsethik*), whereas the later theorists tended strongly toward an *ethic of external norms* (*objektive Ethik*). (For a discussion of the last pair of categories see Ernst Troeltsch, "Grundprobleme der Ethik," in *Zur religiösen Lage, Religionsphilosophie und Ethik*, Vol. II of *Gesammelte Schriften* [4 vols.; Tubingen: J. C. B. Mohr (Paul Siebeck), 1913-1925], pp. 616-626.

[257] In the above exposition of Thomas' thought we found that his explicit discussion of permissible means in warfare was both brief and quite fragmentary (pp. 158-170).

first three issues concerned the complicated reciprocal relations between means and cause. Implicit in the formulation of issues four and five are two questions addressed to the theorists from a twentieth-century perspective--the former a purely formal inquiry, the latter a matter of content. In the discussion of several of these issues the concept of "legal war" emerged as a parallel concept to "just war" and as a possible threat to the entire just-war tradition.

All four theorists either explicitly or implicitly discussed the issue of cause as a presupposition of means. The most straightforward and uncomplicated solution to this problem took the following form: a just cause, that is, a clear and serious offense on the part of the enemy, is the absolutely necessary pre-condition for the use of military means against him. According to this uncomplicated solution, rules about means were valid for one side only--namely, the side which had a just cause and which sought to punish, or at least to apprehend, the offenders. Means-rules did not apply to the offenders, whose exclusive obligation was to surrender to the execution of justice. Van Vollenhoven accurately captures the spirit of this solution when he writes:

> [In book three of On the Law of War and Peace Grotius discussed] the rules of warfare: not conceiving of them as rules for any belligerent nation, . . . not giving them as rules to be observed by bootleggers, but as rules to be observed by the police forces which are hunting the bootleggers, by the men-of-war which are hunting the pirates, by the righteous states inflicting punishment on criminal states.[258]

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[258] "Grotius and Geneva," p. 28 (italics in original).

> The rules of warfare in Grotius' book are rules intended for such states (nations) only as wage a just war against either wrong (iniuria) or crime (maleficium), rules for a bellum iustum or bellum pium. They are neither, therefore, intended for the culprit state, nor for two states who are equally wrongdoers.[259]

The later theorists were quite willing to face the difficulties involved in such a solution and to spell out its implications in some detail. In response to possible questions about jurisdiction, the theorists argued that the righteous prince and his state became, in some sense, the judge of the offending prince and his state. Suárez put the matter most succinctly:

> Just as the sovereign prince may punish his own subjects when they offend others, so he may avenge himself on another prince or state which by reason of some offence [ratione delicti] becomes subject to him.[260]

The other theorists employed similar judicial imagery in describing both the period of actual combat and the Nuremberg-like trial which followed the war.[261]

The theorists also frankly faced the question: What means can be used by persons on the offending side? For actual offenders the clear prescription was: "Submit to your deserved judgment." Self-defense by offenders was equated with the crime of resisting arrest. On the other hand, the theorists did concede the right of self-defense to innocent persons on the offending side, provided that this defense did not become too "aggressive."[262]

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[259] Framework, p. 89.

[260] DB, II, 1.

[261] Vitoria, DJB, 19 and 60; Gentili, III, 2 and 3, but esp. III, 3 (p. 299); Grotius, JBP, II, 20, 8, 4; II, 20, 40, 4; III, 14, 1, 2.

If additional proof is required, a further stipulation of the theorists demonstrates conclusively that the means-question was contingent on the cause-question. Vitoria, Suárez, and Grotius all argued that a prince or state which waged war without a just cause was bound to make restitution for all damages caused by the war. In other words the use of otherwise-permissible means in an unjust war constituted a crime for which restitution had to be made.

> If the cause of a war is unjust, even if the war is begun in an official way, then all acts which arise from it are unjust from the point of view of moral justice. Consequently those who knowingly perform such acts, or cooperate in them, are to be reckoned among those who cannot reach the Kingdom of God without repentance. True repentance, if time and means are adequate, absolutely requires that he who inflicted the damage, whether by killing, by destroying property, or by taking spoil, should make good the wrong done.[263]

This uncomplicated solution--which restricted the use of military means to the side having a just cause--was logically unassailable, given the premises of the just-war tradition. Yet, to some of the theorists at least, the answer seemed to be too facile.[264] On the one hand, because this solution failed to take into account subjective or intentional considerations, it seemed to certain of the theorists to be excessively objectivistic. On the other hand, the theory that only the righteous side could lawfully resort to military action was unabashedly a moral theory; some theorists wished to pay greater attention to legal questions or to contemporary state practice.

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[262] Suárez, DB, VII, 19; cf. Vitoria, Commentary, on ST, II-II, 40, 1, 10 (Williams trans., p. cxx); Gentili, DJB, I, 25 (p. 126); Grotius, JBP, II, 26, 6, 1-2.

[263] Grotius, JBP, III, 10, 3 (author's translation); cf. ibid., III, 10, 4-6; Vitoria, DJB, 33; Suárez, DB, IV, 8. None of the three theorists spelled out a specific mechanism for restitution. In Grotius restitution was a matter of conscience, and the sanctions were clearly religious.

As might be expected, Vitoria and Grotius introduced complications from the standpoint of subjective morality. While admitting that, objectively speaking, only one side could have a just cause in a given war, they strongly asserted that the offending side might mistakenly think that its cause was just. In such a war, subjectively just on both sides, Vitoria and Grotius apparently conceded to both sides the right to employ military means.[265] Vitoria also restricted the scope of military means to be used by the objectively-righteous side: he argued that it should confine itself to defensive measures against the objectively-unrighteous-but-subjectively-innocent side and should forgo all punitive action at the conclusion of the war. Underlying these restrictions was Vitoria's compassion for the Indians.

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[264] Of the four theorists, Suárez probably came closest to espousing the uncomplicated solution.

[265] Vitoria, DI, III, 6; DJB, 32, 48, and 59; Grotius, JBP, II, 23, 13, 2-3; III, 11, 2-4. At the very least, both writers held that the use of military means by the sincere-but-unrighteous side was morally excusable.

> It is, however, to be noted that the natives [Indians] being timid by nature and in other respects dull and stupid, however much the Spaniards may desire to remove these fears and reassure them with regard to peaceful dealings with each other, they may very excusably continue to be afraid at the sight of men strange in garb and armed and much more powerful than themselves. And therefore, if, under the influence of these fears, they united their efforts to drive out the Spaniards or even to slay them, the Spaniards might, indeed, defend themselves but within the limits of permissible self-protection, but it would not be right for them to enforce against the natives any of the other rights of war (as, for instance, after winning the victory and attaining safety, to slay them or despoil them of their goods or seize their cities), because on our hypothesis the natives are innocent and are justified in feeling afraid. Accordingly, the Spaniards ought to defend themselves, but so far as possible with the least damage to the natives, the war being a purely defensive one.[266]

Despite the compassionate motives of Vitoria and Grotius, their introduction of such subjective complications threatened to undermine the logic of their just-war theories. In the uncomplicated policeman-criminal solution to the problem of means, the standard for innocence was more objectivistic and therefore more rigorous. Consequently, relatively few "innocent" persons were threatened by military means; those who were, were granted permission to defend themselves. The subjective complications introduced by Vitoria and Grotius broadened the definition and possibility of innocence. But they also led to the logical difficulty that innocent persons on both sides were justified in, or at least excused for, killing innocent persons on the opposite side--and this, when the slaughter of innocent persons was precisely what Vitoria and Grotius were seeking to avoid!

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[266] DI, III, 6 (CIL trans.; slightly revised by comparison with the Latin). Vitoria also applied this theory of aggressive-but-restricted defense to wars among European Christians (ibid.).

In Suárez, Gentili, and Grotius one also sees evidence of a more juridical approach to the means-question. According to this view a formally-declared war had certain legal effects which applied equally to both sides, regardless of which side had the just cause. These legal effects included the authorizing of both sides to kill enemy soldiers, to enslave prisoners, and to seize booty from the enemy. By implication, no participants on either side of such formally-declared wars were legally bound to make restitution for the damages they had caused.[267]

Suárez cautiously advanced the idea that two sides might "voluntarily engage in war, without just cause."[268] In his view both parties in such a voluntary war were authorized to use military means, and neither belligerent was obligated to make restitution.[269] Gentili's general thesis that most wars were just on both sides allowed him to be much less cautious. Despairing of being able to determine what was "just" in a moral sense, he argued that the term "just war" should be interpreted primarily as "legal war" and that the provisions of the law of nations (jus gentium) should serve as minimum standards of military conduct in all such official wars.[270]

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[267] Suárez, DB, VII, 22; Gentili, DJB, I, 2 (p. 13) and I, 6 (p. 33); Grotius, JBP, I, 3, 4; II, 17, 19; II, 23, 13, 5; III, 3, 1, 1; III, 4, 3-4; III, 6, 27. Of the three Gentili most unambiguously espoused the legal view.

[268] DB, VII, 22.

[269] In some respects Suárez's description of such voluntary wars anticipated modern analyses of the rules governing social practices. While admitting that agreed-upon wars were unjust "in the sight of God," he argued that they did not necessarily involve injustice "in so far as regards the combatants themselves." To illustrate his point, Suárez cited two analogous social practices: gambling and prostitution. Although he considered gambling to be morally wrong, he argued that no injustice was done to willing gamblers who lost money. Similarly, Suárez abhorred prostitution but held that no injustice was done to either buyer or seller when the business transaction was voluntary on both sides (DB, VII, 22).

In his endeavor to promote maximum moderation in warfare, Grotius proposed a combination of the legal and moral approaches to the means-question. On the one hand, he argued that neither side could be held legally liable for employing, in a formally-declared war, the means allowed by the law of nations (jus gentium). Thus the laws of war served to break the never-ending cycle of vengeance and counter-vengeance.[271] On the other hand, Grotius held to the maximal standards of the moral solution to the means-question, arguing that the righteous side was obligated by moral justice or Christian ethics to exercise far greater moderation in warfare than the law of nations required. The same moral justice obligated the unrighteous side not to take any military action, not even such action as the law of nations would have permitted.[272]

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[270] DJB, I, 2 (p. 13); I, 6 (p. 33); books II and III, passim. Gentili's insistence on legal norms was intended in part to restrain the vengeance of the victor who, in his view, always tended to pronounce his cause "just" in the moral sense (DJB, III, 3; p. 299).

[271] JBP, III, 4, 4; III, 19, 11; cf. the references to JBP in n. 267 above.

In addition to asserting that, from a moral standpoint, a just cause was the fundamental pre-requisite for the use of military force,[273] the later theorists discussed another logical relationship between means and cause, namely, whether the presence of a just cause authorized the unlimited employment of all available military means. In modern parlance, the theorists considered whether the end justifies the means.

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[272] JBP, III, 10; III, 11-16. This dual concern of Grotius explains the parallel structure of book three in On the Law of War and Peace. In chapters 4-9 Grotius outlined the provisions of the law of nations concerning various means of warfare. Chapter 10 marked a clear break with the legal discussion and argued that no military means were morally permissible in an unjust war. In chapters 11-16 Grotius treated the same means of warfare that he had discussed in chapters 4-9, but this time from the more moderate and humane standpoint of moral justice.

Two modern discussions of the relation between morality and legality in just-war theory are: Arthur Nussbaum, "The Just War--a Legal Concept?"; and Josef L. Kunz, "Bellum Justum and Bellum Legale," American Journal of International Law, XLV (1951), 528-534. Both writers argue that the just-war theory was exclusively a moral rather than a legal theory. In my view the Kunz-Nussbaum thesis is true only to the extent that the natural-law theory is not a legal theory. It is clear that neither theories of natural law nor theories of just war appeal to positive law for their ultimate sanctions, which are moral or religious. On the other hand, all five just-war theorists used legal or quasi-legal materials within their theories, just as natural-law theorists generally discuss positive law (e.g., civil and canon law) and the law of nations.

The fundamental distinction between a just-war theory and a legal-war theory, then, is not the use or non-use of legal materials. It is rather that in a legal-war theory the question of morality is either ignored or "reduced" to the question of legality, whereas in a just-war theory moral standards preserve autonomous status and serve as criteria for the evaluation of positive (civil or international) law. It is quite clear that Thomas Aquinas, Vitoria, Suárez, and Grotius intended to give such priority to moral principles in their just-war theories. In Gentili, on the other hand, the struggle for priority between morality and legality was often intense; his position might best be characterized as a mixed theory, partially just-war theory and partially legal-war theory.

[273] As noted above, if one introduces the complication of intentionality, the just cause could be either real (objective) or supposed (subjective). See n. 265 above.

A close examination of the four theorists' writings on war reveals that they conceived the means-end problem in the following general terms: if one side has a just cause for war, then justice will only be promoted if that side is successful in winning the war; if the unrighteous side wins, justice will be frustrated. Thus the strictly moral concern for promoting justice was considered to be contingent upon the utilitarian question of military success. In view of this fundamentally teleological orientation, it is not surprising that the four later theorists answered in unison: "Yes, in a war fought for a just cause[274] the end (promoting justice) does justify the use of all necessary military means."

> It is never lawful to kill innocent persons, even unintentionally, except when there is no other means of carrying on the operations of a just war.[275]
>
> If the end is lawful, the necessary means are also lawful. And hence, in the whole course and duration of a war, virtually nothing can be done which contains injustice, except the [deliberate] killing of

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[274] The term "just cause" presupposed a sufficiently clear and grave offense and the unavailability of non-military solutions; see the discussion of these requirements under "Central Issues Concerning Cause."

[275] Vitoria, DJB, 37 (author's translation); cf. ibid., 35, 41, 42, and 52.

> innocent persons. For all other damages are ordinarily judged necessary for attaining the end of war.[276]
>
> A just and unavoidable necessity makes anything lawful.[277]
>
> First rule [concerning means]: In war the things which are necessary for attaining the end are lawful.[278]
>
> Subjects, even when innocent, are liable to attack insofar as they impede the attainment of our right (jus nostrum). . . .
>
> . . . For we wage wars for no other end than to obtain our right (jus nostrum) by means of victory.[279]

There are indications in several of these statements that their authors made them only with reluctance. Some of the theorists tried either to emphasize that their statements applied only to last-resort cases or to discourage the unnecessary killing of innocent persons. But the fact remains that for all four of the later theorists the end of promoting justice justified the use of all military means necessary for achieving victory.[280]

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[276] Suárez, DB, VII, 6 (author's translation); cf. ibid., VII, 15-17.

[277] Gentili, DJB, III, 12 (p. 351); cf. ibid., III, 2 (p. 293); II, 23 (pp. 272, 274).

[278] Grotius, JBP, III, 1, 2, title (author's translation); cf. ibid., III, 1, 4, 1.

[279] Grotius, JPr, VIII (p. 112; author's translation); cf. ibid., VIII (p. 109).

[280] In the case of legal wars the standards of the law of nations with respect to means were sufficiently low that is was unlikely that they would normally have imperilled military success (see, for example, Grotius, JBP, III, 4-9). Furthermore, Gentili seems to have argued that the enemy's refusal to observe any particular legal rule of warfare justified retaliatory non-observance by one's own side (DJB, II, 23 [pp. 270-275]; III, 2 [p. 293]).

Within this basically teleological framework the four theorists elaborated certain limitations on the use of means even in a just war. The first of these limitations was the principle of proportionality. In their discussions of just cause the theorists had urged an anticipatory calculation of the ratio between cause and probable damages. Now they reversed the ratio, advocating a retrospective comparison of the means being used with the cause of the war.

The four later theorists employed a wide variety of terms and phrases to express their concern for proportionality in warfare. Vitoria argued, negatively, that the means of warfare should not "exceed the quality and nature of the wrong," result in "great evils for both sides," or cause the "ruin" of the enemy. In his view such misuse of means could only be characterized as "scandal." Positively, Vitoria exhorted Christian princes to inflict the "minimum calamity and evil," to preserve "equity and humanity," and to use victory "moderately and with Christian restraint." Otherwise, he warned, war's penalties would not be "proportionate to the fault" of the enemy.[281]

For Suárez the key terms were "equality" and "mode" (modus). He urged warriors to preserve "the equality of justice" in their employment of means. When he referred to the proper

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[281] The sources for these phrases, in the order of their quotation, are: DJB, 58, 33, 60, 33, 60, 56, 60, 56.

"mode" of warfare, Suárez seems to have had in mind the etymological derivative "moderation" as well as the strict definition of "measure" or "manner."[282]

Gentili warned belligerents against "excess in war," exhorting them to act "moderately" and to observe "justice and equity" in their use of means.[283] His concern for the maintenance of proportionality in warfare was perhaps most clearly revealed in the prayer with which he concluded the second book of On the Law of War:

> O do Thou, Great God, in Thy goodness keep far aloof barbarity, savagery, and implacable hostility! May the ox and the lion eat hay, and may the ox not learn cruelty, but the lion mercy! May Thy Christians not learn barbarous methods of warfare from barbarians, but may the barbarians be taught more humane ways by Thy followers![284]

It was Grotius, however, who accorded the most central role to the concept of proportionality in war. After having discussed the use of various means from the standpoint of mere legality, Grotius analyzed the same means from the perspective of moral justice, in each case entitling his second thoughts: "a temperamentum with respect to. . . ."[285] This key term in Grotius' work signified "a mixture in due proportion" or "a proper measure" in the employment of military means.[286] Besides according a central place to the term temperamentum, Grotius provided historical illustrations of proportionality or its opposite. He recalled that Ambrose had condemned the "unrestrained vengeance" of Theodosius when the Emperor had indiscriminately slain innocent persons. In addition, Grotius turned the story of Sodom and Gomorrah against the zealots, arguing that God himself "is wont to spare a community of evil men, however large, for the sake of a very few good men."[287]

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[282] DB, VII, 7; I, 7; D. P. Simpson, ed., Cassell's New Latin Dictionary: Latin-English, English-Latin (New York: Funk & Wagnalls Company, 1960), pp. 376-377; cf. Deferrari, Latin-English Dictionary, pp. 656-657.

[283] DJB, III, 4 (p. 305).

[284] Ibid., II, 24 (p. 286).

[285] JBP, III, 11-16, title of each chapter.

As the foregoing terms and phrases indicate, the principle of proportionality included both qualitative and quantitative dimensions.[288] Qualitatively speaking, proportionality included the assessment of several factors: the nature of the enemy's offense; damage to a particular region, to one's own state, to the enemy state, or to the Church; and harm to innocent persons.[289] Quantitatively, the theorists attempted to assign a relative value to each of the qualitative factors, with a view to determing the cost and benefits of specific means or policies. Grotius combined both qualitative and quantitative factors in a general formula for prudential calculus in the employment of means.

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[286] Deferrari, Latin-English Dictionary, p. 1029.

[287] JBP, III, 1, 4, 2 and 3; cf. Genesis 18.

[288] Paul Ramsey has proposed that the terms "proportionality" and "discrimination" be applied to the quantitative and qualitative dimensions, respectively (e.g., "How Shall Counter-Insurgency War Be Conducted Justly?" Just War, pp. 430-431). The term "discrimination," while helpful as a logical clarification, was not employed by the five theorists under study and should not blind us to the qualitative aspects of their concept of proportionality.

[289] Suárez, DB, IV, 8-9; Vitoria, DJB, 37, 51, and 58; Grotius, JBP, III, 1, 4, 2.

> Wherefore we must also beware of what happens, and what we foresee may happen, beyond our purpose, unless the good which our action has in view is much greater than the evil which is feared, or, unless, [when] the good and evil balance, the hope of the good is much greater than the fear of the evil. The decision in such matters must be left to a prudent judgment.[290]

One complication in the proportionality-calculus was the non-static character of the absolute numbers in the ratio, particularly during the course of hostilities. Thus the enemy was held accountable not only for the original cause of war but also for subsequent attempts to resist the administration of justice by the righteous side. As Grotius put the matter,

> Our right to wage war is to be regarded as arising not merely from the origin of the war but also from causes which subsequently develop.[291]

It follows that the "proportionate" level of justifiable counter-violence increased with every increment in the enemy's offense.

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[290] JBP, III, 1, 4, 2.

[291] Ibid., III, 1, 3. The four theorists agreed unanimously that an unjust enemy was liable for all expenses of the war. Vitoria, Suárez, and Grotius required, in addition, punitive damages (Vitoria, DJB, 16-19; Suárez, DB, VII, 5 and 7; Gentili, DJB, III, 3 [p. 298]; Grotius, JBP, III, 1, 3; III, 13, 3). Vitoria illustrated the latter position: if the French had unjustly despoiled the Spaniards of 100,000 ducats, the Spaniards were justified in (1) recovering their 100,000 ducats, (2) seizing compensation for the expenses of the war, and (3) inflicting a monetary penalty of 20,000 ducats on the French (Commentary on ST, II-II, 40, 1, 16 [Williams trans., p. cxxiii]).

Unfortunately, the theorists seldom went beyond such general principles to indicate how the proportionality-calculus might be applied. Vitoria did note that a war which resulted in "great evils for both sides" violated the principle of proportionality.[292] He also argued that to expose "many" innocent persons to harm in an assault which would have "little" effect on the outcome of the war would be a disproportionate action.[293] Conversely, Grotius asserted:

> We may bombard a ship _full_ of pirates or a house _full_ of brigands, even if there are within the same ship or house a _few_ infants, women, or other innocent persons who are thereby endangered.[294]

For Suárez disproportionate damage to an unjust enemy state seemed to constitute a less serious offense than similar damage to one's own righteous state.[295] But he, as well as Vitoria and Grotius, argued that even the side having a just cause was obliged to make restitution for excessive or disproportionate damages inflicted on the enemy.[296]

An inescapable conclusion of the foregoing discussion is that proportionality was primarily a collective concept, a tool for macro-analysis. As applied to war during the course of hostilities, it required a predominance of total good effects over total evil effects, without requiring an exact correspondence of each person's fate to his relative merit. As we shall see in the subsequent discussion of specific means, "proportionality" in the individualized sense was obligatory only during the period following the conclusion of hostilities: there proportionality applied absolutely to individuals, as far as punishment and the preservation of life were concerned; it was observed in so far as possible, as applied to the questions of individual enslavement and loss of personal property.[297]

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[292] DJB, 33.

[293] _Ibid_., 37.

[294] JBP, III, 1, 4, 1 (italics mine).

[295] DB, I, 8.

[296] Suárez, _ibid_., I, 8 and VII, 12; Vitoria, DJB, 40 and 56; Grotius, JBP, III, 1, 4, 1; III, 13, 1, 1. Suárez seems to have vacillated somewhat on this issue; cf. n. 154 above.

Although the proportionality-principle was the primary limitation on the use of means, it was not the only such limitation. Two of the theorists attempted to moderate the savagery of military conduct by appealing to religious sanctions. Suárez, a Catholic theorist, recalled that Ambrose had "visited Theodosius with a major excommunication" because of the Emperor's "slaying of the innocent."[298] Such a recollection served to remind sixteenth-century princes that the contemporary Church claimed authority to apply similar sanctions. Gentili, a Protestant, could not threaten recourse to similar ecclesiastical machinery. Instead, he sternly warned that those who use improper means of warfare "will surely render an account to God."[299]

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[297] See, for example, Suárez, DB, VII, 11-12.

[298] Ibid., VII, 15. As noted above, Grotius also referred to Ambrose's encounter with Theodosius (JBP, III, 1, 4, 2).

[299] DJB, II, 21 (p. 257).

A third limitation on the use of means was suggested by Grotius when he appealed to the pragmatic advantages of moderation. A moderate military policy, he noted, "deprives the enemy of a great weapon, despair."[300] Furthermore, "such moderation gives the appearance of great assurance of victory, and . . . clemency is of itself suited to weaken and conciliate the spirit."[301] To support his thesis, Grotius adduced a graphic illustration from the world of nature: "The boldness of the desperate is especially to be feared; wild beasts bite most fiercely when they are dying."[302]

A final, potentially-available limitation on the use of means was much more intimately related to the logic of the just-war tradition itself. We can formulate this conceivable limitation in terms of two questions. First, was it possible for a just war to become unjust through the employment of atrocious means? In other words, could the excessive or indiscriminate application of military means vitiate the justice of one's cause? Second, was it possible for the misuse of means by the originally-righteous side to constitute a new and counter-just-cause for the originally-unrighteous side? An affirmative answer to either of these questions would have provided restraints on the conduct of war based on a unique just-war variation of deterrence-theory.

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[300] JBP, III, 12, 7, 1.

[301] Ibid., III, 12, 7, 2; cf. III, 15, 7.

[302] Ibid., III, 25, 5 (author's translation). In several passages Gentili also argued that compassion helped to insure future peace (e.g., DJB, III, 13; pp. 353-354). But the primary emphasis of Vitoria, Suárez, and Gentili was that the just warrior had a right to provide for his future security by taking stern measures against the enemy (Vitoria, DJB, 18, 44, 57-59; Suárez, DB, VII, 20; Gentili, DJB, III, 13 [esp. pp. 358-359]).

The most explicit answer to the first question was given by Grotius; he answered in the negative.

> Since an enemy, although waging a just war, does not have the true and perfect right of killing innocent subjects, who are not responsible for the war, unless either as a necessary defensive measure or as a result and apart from his purpose . . ., it follows that, if it is certain that the enemy comes with such a spirit that he absolutely refuses to spare the lives of hostile subjects when he can, these subjects may defend themselves by the law of nature, of which they are not deprived by the law of nations.
>
> But even then we shall not say that the *war* is just on both sides; for it is not a question of the *war*, but of a certain and definite *act*. This *act*, moreover, although done by him who in other respects has a right to wage war, *is unjust*, and hence is justly resisted.[303]

We conclude therefore that, for Grotius at least, the justice of a cause could not be vitiated even by a serious misuse of means, namely, the killing of innocent persons.

Of the four theorists only Gentili explicitly answered the second question. In two passages he argued that a misuse of means could indeed constitute a just cause for a new war. At one point he warned belligerents not to violate the women on the enemy side, reminding them that they would have to "render an account to those sovereigns who wish to observe honourable causes for war and to maintain the common law of nations and of nature."[304] Similarly, Gentili urged the victor in war not to offend against "natural justice" in his treatment of the enemy, lest he "furnish a natural cause for war."[305] Thus we conclude that a kind of just-war deterrence provided a fourth and final limitation on the use of means in a just war--at least according to the just-war theory of Alberico Gentili.[306]

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[303] JBP, III, 26, 6, 1 and 2 (italics added). Suárez and Gentili also allowed self-defense in similar circumstances but did not spell out the theoretical implications of this permission (Suárez, DB, VII, 19; Gentili, DJB, I, 25 [p. 126]).

We turn now from the interrelation of cause and means to two other general issues related to means. The first is the universalizeability of the theorists' means-prescriptions. Our discussion of this issue investigates whether the theorists employed special pleading or a double standard in assessing the morality of military conduct.

In Vitoria there were two doubtful and two clear examples of a double standard for the use of means. Vitoria's definition of "innocence" included only the women and children of the Turks, whereas among Christians it included farmers, peaceable civilians, foreigners, and clerics as well.[307] Similarly, Vitoria accepted the enslavement of "Saracen" prisoners--including women and children--by Christian warriors, while rejecting the enslavement of Christian prisoners by other Christians.[308] However, in these two cases either the canon law or venerable custom dictated Vitoria's position. It is therefore possible that he would have been willing to universalize maxims like the following:

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[304] DJB, II, 21 (p. 257).

[305] Ibid., III, 11 (p. 346). Pereña Vicente argues that Suárez would have taken the same position.

> "A direct attack on the life of the innocent would already be a sufficient cause for a new war, according to the principle of the classic Spanish school and, concretely, of Francisco Suárez (La guerra, I, 307; author's translation).

[306] In the legal-war tradition such deterrence would probably not have been operative because the origin of war was generally traced to an official declaration rather than to the justice of a cause.

> Only women and children are regarded as innocent, unless positive law expands this definition.
>
> All prisoners of war may be enslaved, unless long-standing custom or mutual agreement dictates the contrary.

In his treatment of two other cases, however, Vitoria clearly espoused a double means-standard. He argued that it was permissible to kill all who bore arms among

> unbelievers, from whom it is useless ever to hope for a just peace on any terms. On the contrary, however, in a war against Christians I do not think that this would be lawful.[309]

Similarly, Vitoria held some pagan soldiers strictly accountable for their participation in wars against Christians while exonerating Christian soldiers for following their princes to war.[310] This differentiation in accountability bore implications for the definition of innocence and consequently for the means-question. In sum, Vitoria seemed to advocate the application of relatively mild means to Christians and relatively severe means to Moslems--a double standard perhaps based in part on the severity with which Moslem warriors sometimes treated Christians.[311]

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[307] DJB, 36.

[308] *Ibid.*, 42.

[309] *Ibid.*, 48.

[310] *Ibid.*, 26 and 60.

Suárez devoted little attention to the question of a single or double standard in the use of means.[312] Gentili, on the other hand, expressly regarded "pirates," "brigands," and "rebels" as outlaws: in accord with the spirit of the Roman civil law he excluded such groups from the protection of the laws of war.[313] Furthermore, Gentili excused, if he did not condone, the cruel treatment of rebels.[314] Contrary to the normal obligation to keep faith with an enemy, he advanced the thesis that

> It is not obligatory to keep faith, or even one's oaths, with pirates and brigands, for such men are not included in the number of the enemy. There is no faith with them, no oath in common.[315]

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[311] Vitoria's standard for the treatment of unbelieving Indians approximated the standard for the treatment of Christian believers rather than that for the treatment of unbelieving Moslems.

[312] He did, however, note that the Roman law denied certain rights of war to "pirates and robbers" (DB, VII, 9). In his treatment of causes for war Suárez was more explicit in espousing a double standard for Christians and pagans (ibid., V, 7-8).

[313] DJB, I, 4 (pp. 22-24).

[314] Ibid., III, 7 (pp. 320-321).

[315] Ibid., II, 3 (p. 144).

In contravention of the normal standards prescribed by the law of nations, the Italian-born theorist argued that pirates could be "punished by a shameful death, crucified, and left unburied."[316]

Conceivably, Gentili would have been willing to universalize his rules concerning means in a maxim like the following:

> Observe the laws of war with all official enemies but not with pirates, brigands, or rebels.

However, the use of such labels, unless they were quite precisely defined, opened the door to arbitrariness in the conduct of war. In addition, Gentili's juridical categories were at least potentially in conflict with the moral categories of "just" and "unjust" combatants.[317]

Grotius, too, employed the categories of "pirate" and "brigand." However, he unequivocally defined both categories in moral rather than legal terms, arguing that persons become outlaws because they "associate together for the sake of crime." Conversely, Grotius noted that status as a "pirate" or "brigand" was not irrevocable and that outlaws sometimes underwent a "transformation" into law-abiding citizens.[318]

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[316] Ibid., II, 24 (p. 283).

[317] It should be noted that in Gentili's view the laws of war were to be observed only when the official "enemy" complied with those laws. He argued that enemy violation of the laws of war, i.e., cruelty, justified retaliatory counter-cruelty (see, for example, DJB, II, 18). However, this policy was also universalizeable in terms of the following maxim:

> Observe the laws of war with all legal enemies, so long as the enemies themselves observe those laws.

A twentieth-century problem analogous to defining the legal status of "pirates" or "brigands" is determining how the laws of war apply to "guerrillas."

The overall thrust of Grotius' just-war theory was toward a single, universal moral standard regarding the use of means. While accepting the Roman-law tradition which denied to pirates and brigands the right to enslave prisoners or take booty, he referred this prohibition to their moral rather than their legal status.[319] In addition, he argued that an oath given to a "pirate" or "tyrant" was obligatory because God held man accountable for all oaths invoking the divine name.[320] Implicitly contradicting Gentili, Grotius insisted on the duty of keeping faith with all enemies--even pirates, tyrants, and rebels.

> Such agreements [with outlaws] do not in fact share in that special community of legal obligations which the law of nations has introduced between enemies engaged in a formal and complete war. But because their authors are human beings, they have a common share in the law of nature.[321]

It is thus clear that Grotius was willing to universalize his means-rules and that he would readily have accepted a maxim like the following:

> Discriminate in the use of military means solely on the basis of moral considerations.

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[318] JBP, III, 3, 2, 3; III, 3, 3.

[319] *Ibid.*, III, 3, 1-3; III, 9, 16.

[320] *Ibid.*, II, 13, 15, 1-2.

[321] *Ibid.*, III, 19, 2, 2 (italics mine); cf. III, 19, 6.

Two of the four later theorists discussed the issue of disobedience to an immoral order. Vitoria asserted: "It is not lawful to kill innocent [fellow-] citizens at the prince's command. Therefore not aliens either."[322] Gentili agreed: "A subject is not justified in slaying an innocent person at the order of his commander."[323] Although Suárez and Grotius did not explicitly discuss this issue, their positions on the question can be inferred from their acceptance of conscientious objection to participation in war.

One implication of the natural-law theory, which all four theorists accepted in varying degrees, is that a higher law serves as a criterion for assessing any positive law or military command. Thus none of the four theorists would have hesitated to recommend disobedience to an immoral order. Even Gentili, the most positivistically inclined of the four, unambiguously asserted the soldier's responsibility to refrain from collaborating in injustice.

Discussion of Specific Means

Major means-questions

On the question of lying to the enemy there was diversity of opinion among the four later theorists. Vitoria and Suárez adhered to the strict Augustinian position, categorically rejecting the employment of falsehood as a means of warfare.[324] Because he was in basic sympathy with this strict position, Grotius criticized abuses of it. According to him certain Spanish theorists--not including Vitoria and Suárez--professed adherence to the strict position on lying but accepted blatant falsehoods under the guise of "unspoken interpretations." Although he preferred bold, forthright lies to such mental gymnastics, Grotius argued that Christians were obliged to avoid both.[325] In contrast to the other three theorists, Gentili openly advocated the use of official lies, even devoting a special treatise to his position on the subject.[326]

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[322] DJB, 22.

[323] DJB, I, 25 (p. 126). It would be theoretically possible to justify disobedience to an illegal order on the basis of a legal-war theory.

Generally speaking, the later theorists agreed that belligerents should keep faith with the enemy unless the enemy himself had broken faith or unless circumstances significantly changed.[327] Although he criticized the opinion that promises made to heretics could lawfully be broken, Gentili adopted the same view with respect to "pirates" and "brigands."[328] Grotius, on the other hand, argued that faith should be help with all men, including "pirates," "tyrants," "deserters," "rebels," and "the faithless." Indeed, at one point Grotius indicated his readiness to reject all grounds for promise-breaking--even a prior breach of faith by the enemy: "It is characteristic of a noble mind to abide by treaties even after an injury has been suffered."[329]

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[324] Vitoria, Commentary on ST, II-II, 40, 3, 1 and 3 (Williams trans., pp. cxxix-cxxx); Suárez, De legibus, II, 16, 12, in Selections (CIL trans., pp. 320-321).

[325] JBP, III, 1, 17 and 20.

[326] DJB, II, 5 (esp. pp. 152-153). Gentili's monograph on lying was entitled De abusu mendacii (1599) and defended the thesis that "the official lie, like that of the physician towards his patient, is absolutely justified" (Van der Molen, Alberico Gentili, p. 140).

[327] Vitoria, Commentary on ST, II-II, 40, 3, 1-4; Suárez, DB, VII, 23; Gentili, DJB, III, 14 (pp. 363-365); III, 24 (pp. 432-433); Grotius, JBP, III, 19, 14. The technical formula dealing with a change of circumstances was rebus sic stantibus.

When they spoke of "keeping faith," the four theorists thought in particular of a famous sixteenth-century incident. In 1525 King Francis I of France had been captured in battle by the forces of Emperor Charles V. While a prisoner, Francis I signed the Peace of Madrid, giving up his claims to several disputed territories and ceding the Duchy of Burgundy to the Emperor. He also confirmed the treaty with a knightly oath. Once released, Francis repudiated the treaty, arguing that he had concluded it under compulsion. Pope Clement VII, an opponent of the Emperor, absolved Francis of his oath.[330] Both Vitoria, who was a subject of the Emperor, and Gentili specifically mentioned Francis I in their discussions of good faith; both criticized his breach of faith.[331]

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[328] DJB, III, 19 (p. 403); II, 3 (p. 144).

[329] JBP, III, 19, 19, 4; cf. ibid., III, 19, 2, 6, and 13.

[330] Grimm, Reformation Era, pp. 197-198; Van der Molen, Alberico Gentili, p. 153.

[331] Vitoria, Commentary on ST, II-II, 40, 3, 4 (Williams trans., pp. cxxx-cxxxi); Gentili, DJB, III, 14 (pp. 363-365); III, 24 (p. 432).

As we have noted, Gentili made a special plea for the observance of good faith with "heretics." Grotius voiced a similar appeal on behalf of "pirates" and "rebels." Both pleas were rooted in specific historical circumstances. Gentili was painfully aware that he and his fellow-Protestants were constantly referred to as "heretics" in the writings of Catholic theologians. Indeed, just a few years after Gentili's death Suárez was to accuse his king, James I, of heresy.[332] Grotius recalled that the Portuguese had branded Dutch seamen as "pirates," thereby justifying their treacherous dealings with his countrymen.[333] In a poignant passage Grotius indicated how the terms "heretics" and "rebels" had been employed polemically against the independence-minded Dutch.

> The Spanish designate as 'heretics' all persons who dissent from the See of Rome in regard to any interpretation of Holy Writ or any accepted religious rite, and as 'rebels' all persons whatsoever [who are] not of the opinion that princes should invariably and without exception be obeyed; and at the same time, rejecting every argument in favour of conciliation or clemency, they openly declare that there is no fellowship of good faith[a] to be observed with heretics and rebels.[334]

When they discussed the treatment of enemy persons, all four theorists drew a fundamental distinction between innocent persons and other persons. Despite minor variation in their schemes of categorization, the four theorists were in basic agreement concerning the identity of these "innocent persons":

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[332] Defensio fidei, VI, 4, 14-19 (CIL trans., pp. 716-722).

[333] JPr, XI (pp. 183-184, 196, 199).

[334] JPr, XI (p. 170; words in brackets mine); at letter [a] Grotius included the following note: "[a]See Ayala, [De jure et officiis bellicis,] I, vi, 11."

> Vitoria: children; women, unless certainly guilty; "harmless agricultural folk"; "the rest of the peaceable civilian (togata) population"; foreigners; guests; clerics; members of a religious order.[335]
>
> Suárez: according to the natural law, "children, women, and all unable to bear arms"; "by the ius gentium, "ambassadors"; "among Christians, by positive [canon] law (Decretals, Bk. I, titl xxxiv, chap. ii), religious persons, priests, etcetera"; also, "strangers and foreigners".[336]
>
> Gentili: children; "boys who are not far from the age of puberty"; old people; farmers; traders; travelers; monks; and clerics.[337]
>
> Grotius: children; women innocent of crime; old men; "those who perform religious duties"; pilgrims, priests; "those who direct their energies to literary pursuits, which are honourable and useful to the human race [!]"; farmers; merchants; "artisans and other workmen"; and prisoners of war.[338]

It is clear from these summaries that the term "innocent persons" was almost exactly coterminous with the modern terms "civilians" on "noncombatants." In fact, three of the theorists indicated that persons included in the above categories could forfeit their status as "innocents" by aiding the enemy's military effort.[339]

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[335] DJB, 36. The fact that a person wore a toga distinguished him as a civilian; soldiers wore armor. Already in classical times the term "togatus" had been applied to civilians. In Vitoria's view all women and children, regardless of religious faith, qualified as innocent persons; however, the other six categories seem to have pertained only to Christians, perhaps because they were ultimately derived from the canon law.

[336] DB, VII, 10.

[337] DJB, II, 21 (pp. 251-260); II, 22 (pp. 261-266). The immunity of all groups except the first was, in Gentili's view, contingent on their not aiding the enemy's war-effort.

[338] JBP, III, 11, 8-13; cf. JPr, VIII (pp. 109-111; 114).

All four theorists agreed that fundamentally different treatment should be accorded to "guilty" and "innocent" persons, or combatants and noncombatants, within the enemy population. Specifically, they argued that persons waging a just war should direct their military efforts against the enemy's soldiers, not against enemy noncombatants. However, their consensus went beyond this point in a direction that revealed the teleological orientation of their just-war theories: the later theorists also agreed that the use of military force against innocent persons or civilians was justified to the extent necessary to insure victory. To formulate the same point negatively, the sixteenth- and seventeenth-century theorists argued that persons waging a just war should not employ more violence against innocent persons than the minimum amount required to win the war.[340]

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[339] Vitoria, DJB, 36; Gentili, DJB, II, 21 (pp. 254, 260); II, 22 (pp. 261-266); Grotius, JBP, III, 11, 9, 3. There were, however, two apparent exceptions to the rule that "innocent persons" were identical with "noncombatants." Basing their views on the Deuteronomic war-code, Vitoria and Suárez seem to have argued that in the heat of battle all adult males who were capable of bearing arms and who were not clearly innocent could be regarded as "guilty" (Vitoria, DJB, 38; Suárez, DB, VII, 16). Gentili and Grotius did not mention this exception and probably would have rejected it (see, for example, Gentili, DJB, II, 2 [p. 260]).

The second exception arose when Vitoria and Grotius introduced subjective considerations into the question of the enemy's guilt (see above, nn. 265-266). According to this analysis, enemy "combatants" who fought either under compulsion or because of invincible ignorance qualified as "innocent persons" (Vitoria, DI, III, 6; DJB, 32, 48, and 49; Grotius, JBP, III, 11, 3-5). However, this exception did not compromise the "innocent" status of noncombatants; rather, it enlarged the circle of protected persons. Furthermore, the classification of such combatants as "innocent" was relevant primarily to the period after an enemy's capture or after the conclusion of a war, when his "innocent" status protected him from certain forms of punishment.

Three of the theorists, Vitoria, Suárez, and Grotius, discussed the theoretical basis for this position. Drawing upon the canonistic and Thomistic doctrine of indirect intention, they explained that the just warrior's aim was to injure only enemy combatants, but that unintentionally (*praeter intentionem*) and because of circumstances (*per accidens*) he also harmed innocent persons or noncombatants. In their view this theory of indirect effect was valid even in cases where the damage to innocent persons could be foreseen and predicted.[341]

The theorists' general position on the treatment of the innocent was illustrated in their discussions of specific cases. Vitoria frankly faced the question whether it was ever permissible to assault a city which contained both innocent and guilty persons. His answer was: Yes, if "there is no other means of carrying on the operations of a just war."[342]

> Sometimes it is right, in virtue of collateral circumstances [*per accidens*] to slay the innocent even knowingly, as when a fortress or city is stormed

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[340] Vitoria, DJB, 37; Suárez, VII, 17; Gentili, III, 12 (p. 351); Grotius, JBP, III, 11, 8.

[341] Vitoria, DJB, 34-37; Suárez, DB, VII, 15-19; Grotius, JBP, II, 26, 6; III, 1, 4, 1; III, 2, 6; III, 11, 8; JPr, VIII (p. 110). According to Mangan, Vitoria was the first moral theologian who applied the principle of double-effect to killing innocent persons in warfare ("Historical Analysis," p. 54, n. 26).

[342] DJB, 37.

> in a just war, although it is known that there are a number of innocent people in it and although cannons and other engines of war can not be discharged or fire applied to buildings without destroying innocent together with the guilty. The proof is that war could not otherwise be waged against even the guilty and the justice of the belligerents would be balked.[343]

Suárez agreed with Vitoria in his own analysis of "burning cities" or "destroying fortresses."

> Speaking absolutely, whoever has a right to attain the end of war has the right to use such means. Moreover, the death of the innocent is not intended in itself (per se); rather, it follows as an incidental consequence (per accidens). Therefore the death of the innocent is not considered as voluntarily inflicted, but rather as permitted by one who makes use of his right in a time of necessity. A confirmation of this argument is that it would be impossible in any other way to bring the war to an end.[344]

In his treatment of an analogous case Grotius both cited Vitoria and adopted his viewpoint.

> Many things accompany (consequi) the right of the agent indirectly and beyond the agent's intention (propositum)--things to which the agent, absolutely speaking (per se) would have no right. . . . Thus in order to obtain what is ours, if we cannot get that alone, we have a right to take more, subject to the obligation of returning the excess. Similarly, we may bombard a ship full of pirates or a house full of thieves, even if there are within the same ship or house a few infants, women or other innocent persons, for whom danger is thereby created.[345]

Somewhat more difficult was the question whether the sack of a city was ever morally justified. Despite his clear perception of the attendant danger to innocent civilians, Vitoria was able to encompass even this form of military action within the circle of his double-effect doctrine.

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[343] Ibid.

[344] DB, VII, 17 (author's translation).

[345] JBP, III, 1, 4, 1 (author's translation). In a footnote to this passage Grotius referred both to Vitoria, DJB, 37, and to Thomas Aquinas' discussion of indirect intention in ST, I-II, 73, 8.

> Is it lawful to permit soldiers to sack a city? I answer . . .: This is not unlawful in itself (*per se*), if it is necessary for the waging of war or as a deterrent to the enemy or to kindle the spirits of the soldiers. . . . This action is lawful on the same ground as the burning of a city for reasonable cause. Nevertheless, such permission to sack results in many horrors and cruelties, which are committed beyond all humane limits by barbarous soldiers: the slaughter and tortue of the innocent, the rape of virgins, the violation of married women, and the looting of temples; it is therefore extremely iniquitous to give over a city, especially a Christian city, to sack without the greatest necessity and weightiest reason. *But if the necessity of war requires such action, it is not unlawful*, even if it is probable that the soldiers will perpetrate foul misdeeds of this kind, which their leaders are nevertheless bound to forbid and, as far as possible, to prevent.[346]

Suárez also approved the policy of delivering a "rebellious" city "to fire and to the sword" in cases of necessity.[347] In contrast, the attitude of Grotius was more cautious. He seemed to argue that the pillaging of a city was almost inevitably a disproportionate means of warfare.

> Such actions cannot take place without very serious harm to *many* innocent persons, and often are of little consequence for the result of the war; so that Christian goodness almost always, and bare justice very often, shrinks from them.[348]

It is thus clear that Vitoria, Suárez, and Grotius

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[346] DJB, 52 (author's translation and italics).

[347] DB, VII, 16.

[348] JBP, III, 12, 8, 4 (italics added).

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allowed the unintentional killing of innocent persons during the period of actual combat and in cases of necessity. In their view, however, the achievement of military victory decisively altered the moral situation. At the precise moment when the war was won, this extraordinary permission to kill the innocent ceased.

The theorists' general rule for the period following the termination of hostilities was that only persons adjudged to be "guilty" in a personal sense were subject to possible execution. Despite this agreement at the level of abstraction, however, the various theorists diverged in their assessments of moral responsibility. Suárez and Gentili regarded all enemy combatants as "guilty."[349] Vitoria attributed personal guilt to Moslem soldiers who participated in war against Christians but tended to exonerate both Christian and Indian warriors.[350] In the opinion of Grotius the stigma of guilt attached only to soldiers who had engaged in an unjust war both consciously and voluntarily.[351]

If the later theorists differed concerning the identity of the "guilty," they also disagreed on how the guilty should be treated in the Nuremberg-like post-war judicial proceedings. Guided by Old Testament precedents, Vitoria and Suárez advocated the liberal application of the death penalty in certain cases.

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[349] Suárez, DB, VII, 16; Gentili, DJB, II, 21-22.

[350] DJB, 48; cf. 42 and 26; DI, III, 6.

[351] JBP, III, 11, 3-6.

In Vitoria's view all guilty Moslem soldiers could legitimately be slain if such a measure was required to insure future "peace and security."[352] While conceding that the post-war "slaying of a great multitude" of guilty persons was a means to be employed "only when there was most urgent cause," Suárez argued that "even such slaughter may sometimes be allowed, in order to terrify the rest."[353] The recommendations of Gentili and Grotius were somewhat less stringent, as were Vitoria's in the case of Indians and Christians. Having sharply limited the concept of "guilty," Grotius provided two additional hedges to protect the lives of enemy soldiers. First, he argued that the crime of the "guilty" enemy-soldier must have been of sufficient magnitude to justify capital punishment by a domestic criminal court. Second, he urged that even such vicious criminals should be pardoned, "if their number is very great."[354] Without attempting to discuss the theoretical issues involved in post-war punitive justice, Gentili simply ventured the opinion that even "the captive leaders of the enemy ought not to be put to death."[355] Vitoria argued that most Christian and Indian warriors--leaders and soldiers alike--could not be designated as "guilty" and were thus immune to post-bellum capital punishment. Presumably, executions in wars involving Christians or Indians were the exception rather than the rule.[356]

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[352] DJB, 48.

[353] DB, VII, 7. In their treatment of this issue the basic Old Testament text for both Suárez and Vitoria was Deuteronomy 20, especially vv. 13-14.

[354] JBP, III, 11, 16, 1; III, 11, 17, title.

[355] DJB, III, 8 (p. 327; cf. p. 325); cf. II, 20 (p. 250).

The four theorists' discussions of non-lethal violence against enemy persons proceeded along analogous lines. As in the case of lethal violence, their general rule was that non-lethal violence should be directed against "guilty" enemy persons, both during the war and following the termination of hostilities. Once again exceptions to the rule were envisaged; however, in the case of non-lethal violence the exceptions were somewhat less restrictively formulated. The differences in these exceptions can be diagrammed as follows:

	Lethal Violence	Non-Lethal Violence
During War	Only indirect and unintentional violence against innocent persons permitted in cases of necessity.	Direct and intentional violence against innocent persons permitted in cases of necessity.[357]
After War	Violence permitted only as punishment of persons who are personally guilty.	Violence permitted as punishment of persons who are personally guilty; and as damage to persons who are personally innocent, in cases of necessity.[358]

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[356] DJB, 48 and 59.

[357] In one passage Suárez seems to have limited even non-lethal violence during war to the realm of the indirect and the unintentional (DB, VII, 6).

[358] Vitoria, DJB, 39-42, 45-48; Suárez, DB, VII, 6-7, 10-17; Gentili, II, 16 and 21-22; III, 2, 3, 6, 8, and 9; Grotius, JBP, III, 11-14.

The two most significant forms of non-lethal violence were despoliation and enslavement. Conscious that restraint in despoiling the enemy might conceivably impede the success of a war-effort, Vitoria quite candidly argued that just warriors could, in cases of necessity, resort to the indiscriminate despoliation of enemy persons in an effort to achieve victory.

> If the war goes on for an indefinitely long time, it is lawful utterly to despoil all enemy-subjects, guilty and guiltless alike, for it is from their resources that the enemy is feeding an unjust war, and, on the other hand, his strength is sapped by this spoliation of his citizens.[359]

Without employing such vigorous language Suárez, Gentili, and Grotius agreed with Vitoria in principle.[360] In their prescriptions for proper conduct following the conclusion of hostilities the theorists ruled that compensation for damages should first be exacted from the property of the guilty. However, they also agreed that if the punitive damages collected from the guilty did not suffice for "complete satisfaction," it was permissible to "deprive the innocent of their goods" until the level of just compensation was reached.[361]

Similarly, the theorists held that only guilty enemy persons could be punished by being enslaved. Innocent persons were to be enslaved only when the full measure of compensatory damages could not otherwise be collected.[362] For example, in Vitoria's view the Moslems had a sufficient backlog of indebtedness to Christians to justify the enslavement of infidel women and children.

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[359] DJB, 39.

[360] Suárez, DB, VII, 6; Gentili, DJB, II, 23; Grotius, III, 12.

[361] Vitoria, DJB, 41; Suárez, DB, VII, 7 and 11-12; Gentili, DJB, III, 3-4; Grotius, JBP, III, 13, 1-3; JPr, VIII (p. 113).

> And since the war against the pagans is like this [long and difficult], because it is perpetual and because they can never make amends for all the wrongs and damages they have done to us, it is undoubtedly lawful to carry off both the children and the women of the Saracens into captivity and servitude.[363]

In deference to long-established custom, however, the theorists recognized special rules which applied within, but not between, the Christian and Moslem religious communities: enemy captives of the same faith were not enslaved; instead, they were returned to the enemy in exchange for either ransom-money or one's own captives.[364]

Minor means-questions

By the sixteenth- and seventeenth-century era there was no longer any dispute about the permissibility of ambushes[365] or of fighting on holy days.[366] There was also fundamental agreement among the theorists that the victor in a just or legal war could, under certain circumstances, inflict various penalties on the vanquished enemy nations: impose tribute; curtail the rights of enemy citizens; depose the current rulers and appoint new ones; seize enemy fortresses or part of the enemy's territory; or dissolve and annex the enemy state.[367]

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[362] Vitoria, DJB, 42; Suárez, DB, VII, 12; Gentili, DJB, III, 9; Grotius, JBP, III, 14, 1-2.

[363] DJB, 42 (author's translation). According to Gentili, the Moslems reciprocated this treatment (DJB, III, 9; p. 332).

[364] Vitoria, DJB, 42; Suárez, DB, VII, 13; Gentili, III, 9 (pp. 328-332); Grotius, JBP, III, 7, 9; III, 14, 9; III, 21, 23-30. Suárez did, however, allow the enslavement by Christians of apostates from Christianity (DB, VII, 13).

[365] Vitoria, Commentary on ST, II-II, 40, 3, 1 (Williams trans., p. cxxix); Suárez, DB, VII, 23; Gentili, DJB, III, 3 (pp. 142-144); Grotius, JBP, III, 1, 6-7; JPr, VIII (p. 118).

The theorists' positions on several other incidental questions are of interest primarily because they reveal how general ethical principles were applied to specific cases. Grotius strictly forbade the rape of enemy women on the grounds that "such acts do not contribute to safety or to punishment."[368] The hiring of assassins was, in the view of Gentili and Grotius, a treacherous and therefore forbidden means of warfare.[369] So strong was Gentili's opposition to the use of poison in warfare that he enumerated twenty arguments against it. Three of those arguments were that the use of poison was "contrary to honour and righteousness"; that "he who is lawfully bound by the oath of the medical profession will not give a poisonous drug even to an enemy"; and that the employment of poison resulted in "the slaughter of innocents."[370] A similar concern for protecting innocent persons prompted Gentili to reject the use of wild animals, such as "bulls, lions, and bears," in warfare. Appealing to the moral sensibilities of his readers, he asked rhetorically: "Are brutes able to observe the laws of war relating to children, women, and suppliants, not to mention others?"[371]

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[366] Vitoria, Commentary on ST, II-II, 40, 4, 1-2 (Williams trans., p. cxxxi); Suárez, DB, VII, 24; Gentili, DJB, II, 6 (p. 159); Grotius, JBP, I, 4, 7.

[367] Vitoria, DJB, 56-59; Gentili, DJB, III, 4-13; Grotius, JBP, III, 8, 13-15. In each case Grotius urged moderation.

[368] JBP, III, 4, 19, 1; cf. Gentili, DJB, II, 21 (pp. 257-258).

[369] Gentili, DJB, II, 8 (pp. 168-169); Grotius, JBP, III, 14, 18, 1 and 4; JPr, VIII (p. 118).

In several passages Gentili and Grotius revealed a rather profound respect for the integrity of the human body. Drawing upon classical and legal traditions, Gentili argued against maiming enemies by gouging out their eyes or by cutting off their feet, hands, or fingers. Such penalties seemed to him to be "forbidden by respect for Nature."[372] Similar rules aplied to the bodies of war's victims. Both Gentili and Grotius insisted on the right of fallen enemies to a decent burial. In support of this requirement Grotius adduced both legal and moral reasons:

> The bodies of the dead are not to be mistreated, because that is contrary to the law of burials.[373]

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[370] DJB, II, 6 (pp. 157, 159); cf. Grotius, JBP, III, 4, 15, 1; III, 4, 16, 2; JPr, VIII (p. 118). At another point Gentili argued that poison was a weapon of "extermination" (internecinus) (II, 6; p. 155).

[371] DJB, II, 7 (p. 163). Suárez accepted the use of animals without specifying what kind he had in mind (DB, VII, 25).

[372] DJB, II, 18 (p. 295).

[373] JBP, III, 5, 3; cf. Gentili, DJB, II, 24 (pp. 282-285). As noted above, Gentili excepted "pirates" from the right of burial.

> It seems foreign to the dignity of man's nature that a human body should be trodden under foot and torn to pieces.[374]

Of the five theorists, only Gentili explicitly faced the moral problems raised by modern weapons-technology. At one point he complained that traditionalists were always ready to cry "Foul!" at the slightest innovation in tactics.

> Lo! what a novelty it was thought to be when Stephen of Poland, late King of Muscovy, set fire to and captured some wooden fortifications by throwing balls of fire upon them. Whereupon his barbarian opponent cried out that the law of war and arms was violated and the glory of warfare was stained by a novel deception, whereas in fact this had been usual from the days of Alexander, and was the prototype of our artillery.[375]

Against such defenders of the old order Gentili argued that ancient weapons, for example, the engines of Archimedes, had been at least as destructive as sixteenth-century military methods. And what were those contemporary methods? According to Gentili, the two main "arms of this age" were "muskets and bombards, or 'Lombards.'"[376] Gentili expressly approved the use of both modern weapons, arguing that even the Lombard, an early type of cannon, was "not of an exterminating character" (internecina).[377]

The views of the four later theorists on the treatment of enemy persons and on incidental means of warfare can be related to their several historical contexts. The complexity of this historicizing process varies from theorist to theorist. In two historical works Grotius recounted and condemned specific cruelties in warfare by name, date, and place. Only on occasion did Gentili mention specific contemporary examples of the misuse of means. When he discussed the problem of means, Vitoria indicated quite clearly what wars he had in mind; in one case he referred to a specific battle. Although the Spanish Dominican argued only theoretically and in general about proper conduct in war, it is relatively easy to reconstruct the situations which gave rise to his concern. Suárez, on the other hand, remained almost exclusively theoretical in his exposition of the means-question. Unlike the other three theorists, he conveyed a sense of basic satisfaction with the manner in which the laws of war were currently being applied. It is therefore much more difficult to determine Suárez's position vis-à-vis contemporary military practice.[378]

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[374] JBP, II, 19, 2, 5; cf. II, 19, 3, 4.

[375] DJB, II, 7 (p. 164).

[376] Ibid. (p. 163).

[377] Ibid. (pp. 164-165).

Vitoria referred his discussion of means primarily to three conflicts: the French-Spanish wars; the Turkish-Christian wars; and the Spanish conquest of the Peruvian Indians. In 1539, when Vitoria delivered his two relectiones, the French-Spanish wars had already been raging intermittently for forty-five years.

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[378] Thus the attempt to relate Suárez to contemporary military practice is almost as difficult as was the same effort in the case of Thomas Aquinas.

Since the combatants employed modern weaponry, including cannons and rifles, losses were often heavy. For example, at the Battle of Pavia in 1525, the French army lost about 8,000 men in a single day.[379] The presence of large groups of mercenaries in both armies tended to brutalize the conduct of war. Swiss mercenaries and German landsknechts--often on opposite sides in the French-Spanish conflict--"never gave quarter to each other."[380] On one occasion the Emperor Charles V sent Spanish troops and German mercenaries into northern Italy against the French but failed to pay them on time. The result was a mutiny: "30,000 unpaid Spaniards and landsknechts sacked Rome in 1527 with a hideous loss of life and property."[381] According to Vitoria, the net effect of these destructive internecine conflicts was to weaken Christendom and strengthen its enemies. In a letter written about 1536 he complained:

> War was devised, not for the benefit of princes, but for the welfare of whole peoples. If this be true--as, indeed, it is--let honest men say whether our wars promote the well-being of Spain, France, Italy or Germany; or whether such wars tend to destroy all these nations, and to swell the number of Moors and heretics.[382]

In discussing the use of military means against one of these enemies--the Moslems--Vitoria emphasized the Christians' right to despoil and enslave the foe rather than the necessity of moderation. As his frequent protests make clear, Vitoria adopted this hard line in response to Moslem mistreatment of Christians. According to Oman, when the Turks assaulted Hungary in 1526, "There was wholesale massacre and devastation wherever the Ottoman passed--over 100,000 captives were sold in the slave markets of Constantinople."[383] During the 1530's corsairs from Algeria and Tunisia repeatedly harassed the coastal cities of Italy and Spain, carrying off additional Christian slaves.[384] For his part Vitoria's sovereign, Charles V, launched a successful naval attack on Tunis in 1535. His action freed about 9,000 Christian slaves; however, the Emperor's troops also "sacked Tunis after it had opened its gates."[385]

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[379] Oman, Sixteenth Century, p. 203.

[380] Ibid., p. 37.

[381] Montross, War, p. 234; Grimm, Reformation Era, p. 123.

[382] Translated by Gwladys L. Williams, in Scott, Spanish Origin, pp. 83-84.

As he had done in the case of inter-Christian wars, Vitoria urged moderation in the Spanish conquest of the Indians. In the early 1530's Pizarro, accompanied by one of Vitoria's pupils, Valverde, had led a group of adventurers into the interior of Peru. Having accepted the hospitality of the Inca monarch, Atahuallpa, the Spaniards seized him by treachery and slaughtered large numbers of his followers. In his epic history of the Peruvian conquest William H. Prescott describes the massacre in the following terms:

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[383] Charles Oman, The Sixteenth Century (New York: E. P. Dutton and Company, 1937), p. 164. This book is to be distinguished from the same author's A History of the Art of War in the Sixteenth Century. Only the work on war is cited herein as Oman, Sixteenth Century.

[384] Grimm, Reformation Era, p. 215; Oman, Sixteenth Century, pp. 688-689.

[385] Oman, Sixteenth Century, p. 688.

> Pizarro saw that the hour had come. He waved a white scarf in the air, the appointed signal. The fatal gun was fired from the fortress. Then springing into the square, the Spanish captain and his followers shouted the old war-cry of "St. Jago [Santiago] and at them!" It was answered by the battle-cry of every Spaniard in the city, as, rushing from the avenues of the great halls in which they were concealed, they poured into the plaza, horse and foot, each in his own dark column, and threw themselves into the midst of the Indian crowd. The latter, taken by surprise, stunned by the report of artillery and muskets, the echoes of which reverberated like thunder from the surrounding buildings, and blinded by the smoke which rolled in sulphurous volumes along the squares, were seized with a panic. They knew not whither to fly for refuge from the coming ruin. Nobles and commoners,--all were trampled down under the fierce charge of the cavalry, who dealt their blows right and left, without sparing; while their swords, flashing through the thick gloom, carried dismay into the wretched natives, who now, for the first time, saw the horse and his rider in all their terrors. They made no resistance,--as indeed they had no weapons with which to make it. Every avenue to escape was closed, for the entrance to the square was choked up with the bodies of men who had perished in vain efforts to fly; and such was the agony of the survivors under the terrible pressure of their assailants, that a large body of Indians, by their convulsive struggles, burst through the wall of stone and dried clay which formed part of the boundary of the plaza! It fell, leaving an opening of more than a hundred paces, through which multitudes now found their way into the country, still hotly pursued by the cavalry, who, leaping the fallen rubbish, hung on the rear of the fugitives, striking them down in all directions.[386]

Having taken Atahuallpa prisoner, the Spaniards demanded a huge ransom in gold for his release. The ransom was duly collected, but the Spaniards, fearing the king's influence on the Incas, both accepted the ransom and sentenced Atahuallpa to death for his crimes. At the insistent urging of Valverde, Atahuallpa was converted to Christianity moments before he was scheduled to be burned alive. In response, the Spaniards generously changed the mode of his execution from burning to strangulation.[387]

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[386] *History of the Conquest of Peru with a Preliminary View of the Civilization of the Incas* (2 vols.; London: Richard Bentley, 1847), I, 381-382.

Reports of Pizarro's campaign apparently drifted back to Spain, for in 1534 Vitoria wrote to a fellow-Dominican:

> I do not, indeed dispute the fact that the Emperor can conquer the Indies, for I presume that, strictly speaking, he can do so. But I infer from the accounts of those very persons who took part in the recent battle with Tabalipa [Atahuallpa], that neither Tabalipa nor his people had at any time or in any way injured the Christians, or committed any other act for which war might justly be waged against them. . . .
>
> . . . Furthermore, I believe that the other conquests, taking place between that time and the present have been still more despicable [más ruines].[388]

Two years later Vitoria apparently heard a first-hand report on events in Peru from his ex-pupil Valverde.[389] In 1539, or three years after the interchange with Valverde, he summarized his knowledge of Spanish conduct toward the Indians as follows:

> Now I hear of no miracles or signs or religious patterns of life; may, on the other hand, I hear of many scandals and cruel crimes and acts of impiety.[390]

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[387] Ibid., I, 437-447.

[388] Letter of November 8, 1534, to Father Arcos; translated by Gwladys I. Williams in Scott, Spanish Origin, p. 80; original text in Relectio de Indis, ed. by Pereña and Perez Prendes, Appendix I, p. 138. Cf. Höffner, Christentum und Menschenwürde, pp. 189-190.

[389] Höffner, Christentum und Menshenwürde, pp. 189-190.

[390] DI, II, 14.

Particularly in the relectio "On the Indies" Vitoria urged his countrymen to desist from such crimes and to employ only the most moderate military means in their encounters with the Latin-American natives.

Suárez's discussion of the means-question was explicitly applied to the domestic conflict between Spain and Granada and potentially relevant to the Dutch-Spanish struggle. Late in 1568 the Christians and Moors of Granada rebelled against stringent new rules imposed by the Spanish Crown. The revolt was rather vigorously suppressed. At Guajaras the undisciplined Spanish army engaged in "a general massacre, without sparing age or sex."[391] When Galera was stormed, the Spanish commander gave no quarter to the men on the rebel side; he also "had four hundred women and children butchered in cold blood . . ., while forty-five hundred others were preserved as slaves."[392] Within less than three years 60,000 persons lost their lives.[393] Thousands more were made slaves, including many nominal Christians. Captured women and children were "brought in droves, sometimes of two thousand or more, to the auction block."[394]

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[391] Henry Charles Lea, The Moriscos of Spain: Their Conversion and Expulsion (Philadelphia: Lea Brothers and Co., 1901), p. 242.

[392] Ibid., p. 255.

[393] Ibid., p. 63.

[394] Ibid., p. 240; cf. p. 239. In theory Christian boys under 10 and girls under 11 were exempted from enslavement; however, this immunity was not respected in practice (ibid., pp. 239-240).

As we shall learn from Grotius' account of it, Spanish policy against Dutch "heretics" and "rebels" was similarly rigorous, although it does not seem to have included the enslavement of prisoners.

In the face of such actions by his government Suárez does not seem to have uttered a single word of explicit criticism. On one occasion, he rather complacently commented that heretics were not customarily enslaved in war "since in a sense, at least, they confess Christ." Apostates, on the other hand, because they had entirely forsaken the faith, did not always enjoy such exemption from enslavement: "In the war against Granada . . . we see that the contrary procedure was adopted, with the approval of all the most learned and conscientious men."[395] Although Suárez's discussion of means might conceivably be understood as an implicit critique of certain Spanish excesses, Suárez himself did not so apply it. On the contrary, he seems generally to have assumed the role of apologist for Spanish policy.[396]

On rare occasions Gentili left the world of classical examples to comment on contemporary military practice. Without further specifying his comment, he complained at one point that the practice of killing enemy leaders

> is quite opposed to modern warfare. For now it is the common soldiers who are slain. The leaders, the

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[395] DB, VII, 13.

[396] Pereña Vicente, La guerra, I, 122-123 and passim.

> rich, are saved that they may ransom themselves.
> O unjust form of waging war and cruel traffic![397]

In a brief reference to the French-Spanish war Gentili observed that the Spaniards could not legitimately accuse the Florentines of cruelty when the Florentines merely repaid them in kind.[398] Finally, Gentili explicitly criticized the Spaniards for their mistreatment of the Indians.

> Who will defend the Spaniards when they inflicted a wretched death upon some great kings of the New World, even slaying one with the utmost torture over a slow fire and, as it is said, also using treachery[?][399]

But it was Grotius who discussed the military practice of his day in greatest detail. His early work On the Law of Prize included a long historical section concerning Portuguese treatment of both the East Indians and Dutch traders to the Indies.[400] But Grotius was also well acquainted with Dutch domestic affairs. In a long work entitled The Annals and History of Belgian Affairs[401] he provided a detailed narrative of enemy conduct during the Dutch-Spanish war. Late in life Grotius also followed the sometimes-violent course of the Thirty Years' War.

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[397] DJB, III, 8 (p. 325).

[398] Ibid., II, 18 (p. 232); cf. Oman, Sixteenth Century, pp. 97-99.

[399] DJB, III, 8 (p. 325).

[400] JPr, chap. XI; cf. also chaps. XII and XIII. In this work Grotius also referred in passing to Spanish mistreatment of the Latin American Indians.

> "Certainly a great many writers are of the opinion that a comparison of Spanish conduct in America with Portuguese conduct among the East Indians will show the Spaniards to be much more notable for violence and the Portuguese for perfidy; that is to say, the latter are no less malicious than the former, but the Spaniards are endowed with greater courage and strength" (JPr, XI [pp. 181-182]; italics mine).

Grotius complained that the Portuguese had reduced the East Indian natives to a state of slavery. In addition, he recounted a series of battles in which the inhabitants of various islands were subjected to torture and pillage by their European conquerors. Portuguese conduct on the island of Amboyna reminded Grotius of Spanish behavior in his homeland.

> The inhabitants were subjected to the same savage treatment that the people of the Low Countries had often suffered at the hands of the Spaniards. Slaughter was practised without distinction of age or sex; little children and women were slain indiscriminately. Nor were they merely slain; for some of the Portuguese cut off the limbs of young children before the very eyes of their parents, and others searched with their swords both the wombs of pregnant women and bodies that were unquestionably innocent.[402]

Portuguese treatment of Dutch traders was scarcely more civilized, according to Grotius. In contravention of the laws of war the Portuguese hired assassins and employed poison in an effort to intimidate the Dutch.[403] Contrary to the customary practice among Christians the Portuguese enslaved Dutch captives, refusing to exchange them either for a much larger number of their own captives or for an adequate ransom fee.[404] But enslaved Dutch prisoners were fortunate compared with those whom the enemy drowned or mutilated.

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[401] Annales et historiae de rebus belgicis (Amsterdam: Iohannes Blaeu, 1658). In this work Grotius also revealed his awareness of the French wars of religion. His account of the year 1572 included reference to "the terrible news of the French treacheries"--i.e., word about the Massacre of St. Bartholomew, in which approximately 20,000 Huguenots were slain (p. 37; author's translation; cf. Grimm, Reformation Era, pp. 449-451).

[402] JPr, XI (p. 209; cf. pp. 181, 211, 213-214).

[403] Ibid., VIII (p. 118); XI (pp. 195-196, 202); XII (p. 270).

> When the Dutchmen had been transferred to a small caracore . . ., a Portuguese officer ordered that they should be drawn up in a row; then addressing a subordinate who was holding an unsheathed sword in his hand, this officer said: 'Cut off the right arm of the man who is first in line,' to which he added, 'Now cut off his left arm.' The commands were obeyed, and in such a manner that one might have doubted which was the more barbarous, the person issuing the orders or the person who obeyed them. Moreover, the officer next ordered that the victim's feet should be severed with separate strokes. The other captives, whom the same torments awaited, were standing by, more eager at that moment for death than they had ever been for life. Yet as these examples were set before them, one after another, their emotion changed from fear to a mutual compassion. The trunks could be seen surviving their own mutilation and--worst of ills!--deprived of human likeness. Nevertheless, the perpetrators of the deed were much further removed from every semblance of humanity! Lastly, the heads were cut off.[405]

In contrast, Grotius reported, the Dutch waged war against the Portuguese with characteristic "self-restraint" and "almost excessive clemency."[406]

Grotius accused the Spanish of having committed similar atrocities against his Dutch countrymen, particularly in their attacks on cities. In 1572 the Spaniards assaulted the town of Zutphen.

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[404] Ibid., XI (pp. 175-176).

[405] Ibid., XI (p. 197; cf. p. 200). Grotius also reported that the Portuguese shot a French prisoner from a cannon and tore a Dutch sailor apart by attaching ropes from his limbs to four ships sailing in different directions (ibid., pp. 179, 205). For Grotius' summary of Portuguese offenses, see JPr, XIII (p. 291).

[406] Ibid., XII (p. 279); XI (p. 214).

> Zutphen was taken . . . when it was ready to surrender. The raging victors subjected the inhabitants of the town to tortures and rapes; finally, they killed them all without reverence for either age or sex.[407]

A similar fate overtook Antwerp in 1576. There soldiers of the Spanish army--irate because they had not been paid on time--mutinied and attacked the city.

> They poured . . . into Antwerp itself, where for some days they glutted their anger and greed by killing the citizens, burning the buildings, and seizing an enormous amount of booty.[408]

The "Spanish Fury," as the mutiny came to be known, cost the lives of between six and seven thousand Dutch citizens.[409]

Two paragraphs in Grotius' On the Law of Prize simultaneously summarized his complaint against the Spaniards and illustrated his thought on the questions of proportionality and permissible means.

> When Philip [II] strove to regain through war the sovereign status from which he had fallen, and when he sought to have punishment inflicted even for righteous deeds, the Dutch were provided with an exceedingly just motive for war, namely, the defence of their lives, property, and lawful liberty.
>
> Subsequently, the very course of the war gave

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[407] Grotius, Annales, II (p. 38; author's translation).

[408] Ibid., II (p. 48; author's translation).

[409] Montross, War, p. 249; Grimm, Reformation Era, p. 438. Grotius also noted that the Dutch leader, William of Orange, was assassinated in 1584 by a Burgundian supporter of Philip II (Annales, IV, p. 85).

> rise to additional rights, one after another: first, as a consequence of the tremendous losses which the Spanish inflicted unjustly upon the Hollanders (in the early period of the war, by laying waste the fields or by destroying and ravaging the cities, and later, throughout many years, by the seizure of spoils); *secondly*, as a consequence of the expenses of the war itself, which . . . have been and still are so heavy from day to day that they practically defy comparison with any ever before incurred, a fact that is understandable if one considers the long duration of the conflict and the wealth of the enemy whom the Dutch were obliged to resist; and *thirdly*, on the ground of offences [*delicta*] committed, under which head I include not only the slaughter of the innocent, rapine, and all other violent deeds of this kind, which are sinful [*peccata*] because the war is unjust, but also other acts which would not be lawful [*licuissent*] even for one who was waging a just war. The countless examples of offences belonging to this latter group--examples of cruelty, perfidy, and lust--so far exceed our ability to enumerate them, that they could not be adequately described even in an historical work. If the three heads listed above are combined as one, they will form an almost infinite aggregation of rights, or at least an aggregation that exceeds the possibility of full recovery at any time, through whatever victories.[410]

Despite such severe provocation and such an aggregation of rights, Grotius noted, the Dutch had set "an example of clemency and good faith" in their military conduct, thus revealing their "singularly humane qualities."[411]

Finally, as Swedish Ambassador to France Grotius carefully followed the events of the Thirty Years' War. Between 1635 and 1645, in weekly reports to Oxenstiern, High Chancellor of

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[410] JPr, XIII (pp. 289-290; CIL trans., slightly revised by comparison with the Latin; italics added).

[411] *Ibid.*, XI (p. 171). Montross notes, however, that the Dutch defenders of Haarlem publicly hanged their Spanish prisoners (*War*, p. 250).

Sweden, he carefully reviewed the course of the war and the political activity surrounding it.[412] Grotius was clearly horrified by the excesses of the Thirty Years' War.[413] In a letter written during this period he lamented:

> Germany is so broken by this long and severe war that it seems to have lost even the memory of freedom.[414]

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[412] Van Eysinga, Hugo Grotius, pp. 111-114.

[413] For example, in 1531 the Catholic capture and sack of Magdeburg resulted in the death of about 25,000 Saxons (Wedgwood, Thirty Years War, p. 290). Grotius referred to the fall of Magdeburg in a letter dated June 2, 1531 (Briefwisseling, IV, 398).

[414] Van Eysinga, Hugo Grotius, p. 114. It should perhaps be noted at the conclusion of this historical sketch that none of the later theorists based his complaint about the use of means on the technology of sixteenth- or early seventeenth-century warfare.

CONCLUSION

Specific Conclusions of the Study

1. The theorists analyzed in this study distinguished three major criteria of permissible war: authority, cause, and a third requirement. Thomas Aquinas identified the third criterion as a "right intention." Although he did not ignore the question of means, Thomas attributed greater importance to the soldier's state of mind in waging war, requiring in particular that the warrior intend the advancement of the good and the achievement of peace. In contrast, the four later theorists specified a "proper mode" of warfare, or the right use of means, as the third criterion of permissible war. While conceding the ethical significance of a charitable attitude, they devoted primary attention to devising a set of prescriptions for the proper conduct of war. Their aim in formulating such rules was to promote justice in international relations.

2. There were rather clear logical relationships among the several criteria of just war. Authority and cause were usually conceived as individually necessary and jointly sufficient conditions for legitimate recourse to war. Taken together, proper authority and cause constituted the necessary pre-requisite for either properly-motivated participation in war (right intention) or the use of legitimate means in warfare (proper mode).

However, the logical relationship between the cause of war and the criteria of intention and means was described almost exclusively in one-directional terms. The possibility that a perverse intention or the use of illegitimate means might adversely affect the justice of one's cause was, for the most part, either explicitly denied or tacitly ignored.

3. The question of revolution or tyrannicide was discussed by all five of the theorists. Since revolution was generally regarded as a domestic rather than an international matter, it did not qualify as war in the strict sense. Suárez distinguished the question from war proper by placing it in a separate section on sedition; Grotius treated the revolution-issue within his discussion of authority. The framework employed in the present study accepts the Grotian proposal, conceiving the problem of revolution as an aspect of the authority-question.

In comparison with their systematic discussions of war the theorists' comments on revolution were brief and relatively undeveloped. On the whole, justifiable war and permissible revolution were conceived as analogous problems. Revolutionary authority was variously located in the whole people, general councils, or inferior magistrates. Legitimate causes for revolution generally resembled proper causes for war. The means-question, on the other hand, was virtually ignored in discussions of revolution, with the exception that tyrannicide was sometimes explicitly approved.[1]

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[1] The fact that other scholars had subjected the problem of tyrannicide to intensive analysis, particularly during the twelfth and the sixteenth centuries, may help to explain why the five theorists devoted only minimal attention to the topic of justifiable rebellion.

Although a cautious attitude toward revolution was not logically entailed by their just-war views, the five theorists analyzed in this study generally opposed revolutionary violence. Thomas Aquinas, Gentili, and Grotius gradually became more conservative in their views on the question. While the younger Grotius approved the Dutch war against Spain, he denied that it was a revolution. Suárez was rather clearly opposed to the rebellion in Granada and quite probably to the Dutch insurrection. Only in a single case did one of the five theorists explicitly approve revolutionary action: Suárez recommended the overthrow of a heretical king--in Protestant England, not in his native Spain.

4. In discussing the question of conscientious objection the theorists combined aspects of the who- and when-questions. Certain participants in war, specifically common citizens or ordinary soldiers, were faced with the question whether a legitimate cause for military action existed. In elaborating their just-war views the four later theorists explicitly treated the issue of conscientious objection. Thomas Aquinas' general position on disobedience to an unjust command was of obvious relevance to the same question.

There were marked differences in emphasis among the theorists, particularly in their analyses of doubtful cases. However, this diversity should not be allowed to obscure a more general consensus among them: all five theorists agreed that the obligation to obey the prince or a military commander was ultimately limited by a higher duty to act justly. In twentieth-century terms, the theorists unanimously advocated selective conscientious objection.

5. At least in approximate terms, one can determine what the term "war" meant when it was employed by the five just-war theorists. For the most part, the soldiers involved were not conscripted: between the thirteenth and the mid-seventeenth centuries mercenaries and professional soldiers constituted the overwhelming majority of combatants. Only in rare cases--for example, in the Italian city-states, the Dutch provinces, and seventeenth-century Sweden--was there a general military obligation.

The armies of the period were relatively small by twentieth-century standards. However, seventeenth-century land forces were significantly larger than those of the thirteenth century. During Thomas' lifetime the number of soldiers engaged in battle rarely exceeded 10,000 men. By the time of Grotius and the Thirty Years' War, armies of 35,000-50,000 men were not uncommon.

Coupled with this gradual quantitative increase in the size of armies was a qualitative improvement in the lethal effectiveness of their weapons. During the thirteenth century the crossbow struck fear into the hearts of armored knights. In subsequent centuries it was successively replaced by the longbow, the arquebus, and the musket. Cannons gradually replaced catapults and trebuchets as the major offensive weapons in siege-warfare. Various types of cannon were also employed in the field.

Despite these technological innovations such venerable weapons as the pike, the sword, and the lance continued to play a significant role, even in seventeenth-century warfare.[2]

Civilian populations were not immune to violence during this period. However, the fate of noncombatants depended more on the shape of military policy than on changes in weapons-technology. Assaults on cities--whether made with the aid of catapults and swords or with cannons and muskets--generally resulted in large numbers of civilian casualties. The sack of Béziers in the thirteenth century and of Magdeburg in the seventeenth produced similar tragic effects. Gentili expressly denied that the introduction of cannons into European arsenals made such exterminatory policies inevitable.

General Conclusions of the Study

1. All five just-war theories can be more or less precisely related to specific developments in the history of Western Europe. In some cases the theorists themselves applied their discussions to particular wars. Vitoria, Suárez, Gentili, and the early Grotius explicitly identified contemporary historical referents of their analyses. On the other hand, Grotius' mature work, parts of Suárez's treatise, and Thomas Aquinas' comments on war were formulated in very general terms.

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[2] By way of contrast, the following twentieth-century weapons were unknown in 1650: automatic rifles, machine guns, grenades, mines, tanks, poisonous gases, bombs of various types, submarines, helicopters, planes, and missiles.

XUM

A central aim of this study has been to reconstruct the specific situations to which their just-war theories were addressed. In most cases it has been possible to discover at least plausible connections between intellectual and social history.

On occasion the just-war theorists disagreed in their assessments of particular historical phenomena. Spain's annexation of Portugal called forth differing responses from the Spaniard Suárez and the two Protestant theorists. In their attitudes toward King James I of England these three contemporaries divided along similar lines: Gentili and Grotius looked upon James as the protector of England and ecumenical Protestantism, while Suárez accused the English monarch of heresy. Perhaps the most striking divergence of opinion within the tradition occurred in the case of the Dutch-Spanish war. Suárez, Gentili, and Grotius radically disagreed, both in their descriptions of the conflict-situation and in their ethical prescriptions. A comparison between views expressed within the Christian just-war tradition and external perspectives further complicates the picture. The campaign which Thomas Aquinas condemned as infidel aggression against the Crusader States was celebrated by Moslem poets as the reconquest of the Holy Land.

2. Twentieth-century proponents of the just-war theory often argue that it serves as a critical tool and a restraining force. Evidence to support this view can be discovered in the present study: Vitoria and the mature Grotius repeatedly urged their contemporaries to exercise greater moderation in military

affairs. However, just-war theories were frequently two-edged swords. In addition to exercising a "restraining" influence they also fulfilled what might be termed a "justificatory" or "apologetic" function. This second use of just-war thought was most apparent in Gentili, Suárez, and the early Grotius, but it was present in all five theorists.

At the theoretical level the restraining function of the just-war tradition was to refute power-politics views. By the time of the later theorists identifiable enemies of just-war thinking were on the scene. Particularly in their discussions of the _when_-question the theorists took issue with such opponents as Machiavelli and Hobbes. When the five theorists insisted on a just or suitable cause for war, they implicitly excluded wars fought for national self-aggrandizement, at the whim of the prince, or because of inevitable international animosity.

The justificatory edge of the just-war sword was turned against pacifists. Conscious that an ongoing tradition within Christianity rejected war--often by appealing to Jesus and the practice of the early Church--the five theorists took pains to demonstrate the compatibility of the faith with military activity. Indeed, their analyses of the _whether_-question were systematic attempts to refute the pacifist position. In response to contemporary re-statements of pacifism, the later theorists expanded their whether-discussions, sometimes referring by name to such opponents as Erasmus and the Anabaptists.

At the practical level the just-war tradition fulfilled a similar dual role. The restraining function of just-war thought was to deny the moral legitimacy of particular wars and to condemn the immoderate use of means in the prosecution of war. It was perhaps Vitoria and Grotius who best illustrated the restrictive possibilities within the tradition. The Spanish theorist rejected certain grounds for war alleged by the conquistadores and condemned their excessive violence against the Indians. Grotius exposed the flimsy pretexts upon which Spain and Portugal had attacked the Dutch and censured the brutality of the Low Countries' enemies. In addition, both theorists pled for general moderation in the wars fought within Christendom.

There was, however, an obverse side to this restraining influence. The various just-war theories served to justify specific wars and to condone the employment of certain violent means. As applied to cause, this justificatory function of just-war thought was best exemplified in Suárez and Gentili, who generally approved the wars of Spain and England, respectively. However, the theories of Vitoria and Grotius also included an apologetic interest. While rejecting many conquistadorial arguments, Vitoria accepted numerous legitimate titles for Spanish colonialism. In condemning Spanish and Portuguese aggression against the Dutch, Grotius simultaneously justified the military resistance of the Low Countries. Writing several centuries earlier, Thomas Aquinas had provided plausible arguments for the crusading-activity of Christian Europe.

XUM

The justificatory role of just-war thought was also apparent in discussions of the means-question. Thomas Aquinas and all of the later theorists asserted the moral legitimacy of seizing booty and enslaving prisoners. Reversing Thomas' strict position, the sixteenth- and seventeenth-century theorists explicitly allowed the indirect killing of the innocent in the prosecution of a just war. Thus we conclude that at every level the just-war tradition served to restrain violence, on the one hand, and to justify it, on the other.

3. The just war and the crusade are generally conceived as antitheses, notably in Bainton's typological study,[3] but also in Ralph Potter's recent War and Moral Discourse.[4] The revisionist conclusion of this study is that, as formulated by the five classic theorists, the just war and the crusade were strictly analogous in terms of authority, cause, and means. Corresponding to the authority of the prince to wage just wars was the competence of the Pope or Christian princes to authorize religious wars. As we have noted, all five theorists formulated legitimate causes for political and religious war in precisely analogous terms. On the means-question, as well, there was no identifiable distinction between prescriptions for the two types of war: the theorists argued in general that if the cause of a war was justifiable, the means necessary to achieve victory were morally permissible. In sum, a purely formal distinction between

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[3] Christian Attitudes, pp. 14-15.

[4] War and Moral Discourse, esp. pp. 51-52.

justifiable political and religious wars is impossible.

4. It is misleading, if not incorrect, to speak of "the just-war theory." Despite a measure of continuity within the tradition there was striking diversity of opinion in the theoretical formulation of just-war views--to say nothing of disagreements in concrete application. The major areas of historical consensus and dissensus can be rather precisely delimited.

All five theorists discussed the morality of warfare in terms of four formal questions: whether, who, when, and how. By definition there was unanimity in the theorists' answers to the whether-question: without exception they argued that war was justifiable under certain circumstances. Other areas of general consensus among the five theorists are indicated by the outline of the present study. Briefly stated, the five authors agreed:

> Who: that a proper authority was required for war; that both the prince and the Church played a role in war; and that lay and clerical functions in warfare were distinct.
>
> When: that a legitimate cause was required for war; that wars could be fought for either political or religious reasons; and that national self-defense and the defense of the Church constituted legitimate causes for war.
>
> How: that attitudinal or intentional factors were of potential relevance to the morality of participation in war; that lying to the enemy and breaking faith with him were illicit means of warfare; and that such means as the use of ambushes, the seizure of booty, and the enslavement of prisoners were, in principle, permitted in warfare.

The writings of the four later theorists revealed an even greater measure of consensus: several general sub-questions, for example, proportionality, were universally discussed; a trilogy of general causes achieved widespread acceptance; and the sixteenth- and seventeenth-century writers explicitly developed the interventionistic implications of their theories.

On the other hand, the five theorists treated in this study--who represented only a limited sample of opinion from the entire just-war tradition--differed sharply on numerous issues:

Who: whether subordinate princes within a perfect community had the right to wage war; whether the Pope possessed war-making authority; and whether mercenary-service was morally justifiable.

When: whether the offense of the enemy was to be conceived merely in terms of an objective offense or also in terms of subjective guilt; whether a war could be just on both sides; whether conscientious objection was permissible in doubtful cases; and whether sins against the natural law, the restrictions of free trade, an anticipated injury, heresy, or idolatry constituted legitimate causes for war.

How: whether the question of intention or of means was the more important ethical consideration; whether rules about means applied equally to both sides or only to the side having a just cause; whether innocent persons on the unjust side could lawfully be punished for the crimes of their group; and whether innocent persons could be killed in warfare.[5]

It is thus clear that the just-war theory is an abstraction--an ideal-type which can be constructed only by concentrating on several general themes discussed by certain theorists and by ignoring the theorists' rather marked differences of opinion and emphasis. An alternative way of describing this combination of unity and diversity might be to refer to various just-war theories within an ongoing just-war tradition. The identification of each theory with a particular person, e.g., "the just-war theory of Thomas Aquinas," would adequately convey the uniqueness of each writer's views. On the other hand, the term "just-war tradition" could clearly indicate continuity in the general framework of discussion and the occurrence of constant interchange among the various just-war theorists.

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[5] If the views of other just-war theorists were included, the areas of disagreement would be greatly expanded. For example, at various stages in the history of the tradition the following arguments were advanced: that pagan princes did not exercise legitimate authority; that only one prince, the Holy Roman Emperor, possessed authority to wage war; that the mere unbelief of pagans constituted a legitimate cause for military action against them; and that the natural-slave status of primitive peoples provided sufficient warrant for their subjugation by naturally-free nations.

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XUM

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XUM

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XUM